



## RESOLUTION

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, RELATING TO A MASTER AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE STATE OF HAWAII FOR THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT SECTION FROM WEST OAHU TO FARRINGTON HIGHWAY

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, provides that any intergovernmental agreement, or any amendments thereto, which places an obligation upon the City or any department or agency thereof shall require the prior consent and approval of the City Council; and

WHEREAS, pursuant to Hawaii Revised Statutes Section 51-1 (1993), the City is authorized to construct, extend, own, maintain, and operate mass transit systems on the island of Oahu; and

WHEREAS, the City is constructing the West Oahu/Farrington Highway Section of the Honolulu High-Capacity Transit Corridor Project (HHCTCP); and

WHEREAS, the West Oahu/Farrington Highway Section of the HHCTCP is proposed to be situated within highway rights-of-way which are under the jurisdiction, authority, and control of the State of Hawaii, Department of Transportation (State); and

WHEREAS, the City and the State mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party within the State's rights-of-way limits; and

WHEREAS, such an arrangement would impose certain obligations on the City necessitating an intergovernmental agreement between the City and the State; now, therefore

BE IT RESOLVED by the Council of the City and County of Honolulu, that the Council consent to and approve the proposed agreement attached hereto as Exhibit "1" and by reference made a part of this Resolution; and

BE IT FURTHER RESOLVED that the Director of the Department of Budget and Fiscal Services (BFS Director) be hereby authorized to:

1. Execute an agreement with the State in substantially the same form as the proposed agreement attached hereto as Exhibit "1", provided that the Joint



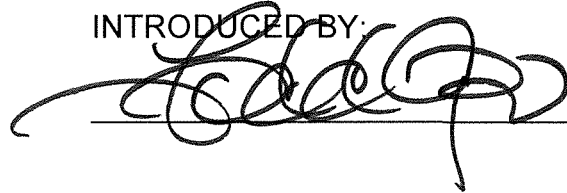
## RESOLUTION

Use and Occupancy Agreement, attached as Exhibit "B" to the proposed agreement, shall not be executed until after the Federal Transit Administration issues a Record of Decision for the HHCTCP; and

2. Execute any incidental or related agreements and documents in furtherance of the above agreement so long as such agreements and documents do not incur additional obligations on the part of the City; and

BE IT FINALLY RESOLVED that the clerk be and hereby is directed to transmit copies of this Resolution to the BFS Director, the Director of the Department of Transportation Services, and the Director of the State Department of Transportation, and to such other agencies as may be necessary.

INTRODUCED BY:

 (br)

DATE OF INTRODUCTION:

OCT 07 2010

Honolulu, Hawaii

Councilmembers

# Exhibit “1”

**Master Agreement  
Between  
The City and County of Honolulu and The State of Hawaii  
For  
The Honolulu High-Capacity Transit Corridor Project  
Section from West Oahu to Farrington Highway**

THIS AGREEMENT is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "Master Agreement"), by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter called the "STATE", and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "CITY".

WITNESSETH THAT:

WHEREAS, pursuant to Hawaii Revised Statutes (HRS) Section 51-1, the CITY is authorized to construct, extend, own, maintain and operate mass transit systems on the island of O`ahu;

WHEREAS, pursuant to CITY Ordinance 07-001, the CITY is authorized to implement the Locally Preferred Alternative (LPA), which is a fixed guideway transit system between Kapolei and the University of Hawaii (UH) at Manoa, provided that a Minimum Operable Segment (MOS) of the LPA be constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West O`ahu (near the future Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the CITY is constructing a mass transit system known as the Honolulu High-Capacity Transit Corridor Project within the limits of the West O`ahu/Farrington Highway Section, hereinafter referred to as the "PROJECT";

WHEREAS, the MOS includes the limits of the West O`ahu/Farrington Highway Section as described in Article 1 and Exhibit "A";

WHEREAS, the CITY is responsible for and will procure the contracts for the PROJECT;

WHEREAS, the STATE has jurisdiction of the State Highways;



WHEREAS, the mission of the STATE is to provide a safe, efficient and accessible highway system through the utilization of available resources in the maintenance, enhancement and support of land transportation facilities;

WHEREAS, the PROJECT is proposed to be situated within highway rights-of-way which are under the jurisdiction, authority, and control of the STATE;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the CITY's PROJECT and transit facilities (hereinafter referred to as "GUIDEWAY FACILITY") within the STATE rights-of-way subject to the conditions herein;

WHEREAS, the STATE requires that the GUIDEWAY FACILITY not adversely affect its highway safety, construction, maintenance, and operations; does not interfere, or minimizes to the extent possible, as agreed to by the STATE, the free and safe flow of vehicular, bicycle and pedestrian traffic; does not interfere with its existing, planned, or contemplated future use of the STATE rights-of-way for land transportation purposes; and the construction, operation, and maintenance of the GUIDEWAY FACILITY within the STATE rights-of-way are in accordance with all applicable federal, State, CITY and any other applicable laws, ordinances, and regulations;

WHEREAS, guidelines outlining safe and rational practices for accommodating the GUIDEWAY FACILITY within STATE rights-of-way are of valuable assistance to transportation agencies;

WHEREAS, the STATE and the CITY mutually recognize the need for entering into a Master Agreement designating and setting forth the responsibilities of each party;

WHEREAS, the STATE and the CITY, by mutual agreement, have identified each of the parties' responsibilities within the STATE's right-of-way limits, and further, such responsibilities shall be contained in a Joint Use and Occupancy Agreement, as set forth in Exhibit "B", attached hereto;

WHEREAS, the CITY has the authority to enter into this Master Agreement and to undertake the PROJECT hereinafter described and the STATE has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under the HRS to enter into this Master Agreement; and

WHEREAS, the Director of Transportation has the authority to enter into this Master Agreement for the STATE under HRS Section 26-19;

NOW, THEREFORE, the STATE and the CITY, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, mutually agree as follows:

## **ARTICLE I – PROJECT DESCRIPTION**

The PROJECT includes, but is not limited to, the design, construction, and maintenance of a portion of the Honolulu High Capacity Transit Corridor Project (“HHCTCP”) from its terminus at East Kapolei and continuing in an easterly direction approximately 6.8 miles to a point just east of the planned Pearl Highlands station. The GUIDEWAY FACILITY consists primarily of a two track aerial structure with a short segment at-grade. A segment of the GUIDEWAY FACILITY will be situated within the existing highway alignment for Farrington Highway which requires utility relocations, reconfiguration and reconstruction of the medians, left turn pockets, traffic signal relocations, signs, pavement markers/markings, roadway widening, pedestrian and bicycle facilities, design and construction of an access road through the planned community of Ho`opili, removal/relocation of existing landscaping and installation of temporary landscaping, landscaping irrigation, box culverts and other drainage facilities, design and construction of new retaining walls, stations, traction power substations, gap breaker stations and associated grading.

A terminus for the GUIDEWAY FACILITY will be the East Kapolei Station located in the vicinity of the intersection of the proposed East-West Road and along the east side of North-South Road. From the East Kapolei Station, the GUIDEWAY FACILITY will proceed northward parallel to North-South Road towards the proposed UH-West O`ahu Station site. The GUIDEWAY FACILITY then turns to the east across Kaloi Channel and continues through the planned community of Ho`opili until reaching Farrington Highway. The GUIDEWAY FACILITY continues in the easterly direction along the north side of the CITY section of Farrington Highway and crosses into the median of Farrington Highway in the vicinity of Fort Weaver – Kunia Road where Farrington Highway has been improved to two through lanes in each direction with a center median. The GUIDEWAY FACILITY continues along the median until crossing the outbound lanes of Farrington Highway near Waipahu High School.

Approaching Leeward Community College (“LCC”), the GUIDEWAY FACILITY transverses from the median to the south side of Farrington Highway where it transitions to an at-grade guideway section with retaining walls and under crossing structures. The GUIDEWAY FACILITY continues at-grade adjacent to the proposed Maintenance and Storage Facility site and transitions to an aerial guideway structure just past LCC where it crosses the H-1/H-2 (Waiawa) Interchange. The GUIDEWAY FACILITY then turns in an easterly direction to parallel Kamehameha Highway connecting to the proposed Pearl Highlands station, approximately an additional 400-feet east.

The placement of GUIDEWAY FACILITY columns in the center median of Farrington Highway requires reconfiguration of the medians and related roadway modifications. The column placement and relocation of the medians will allow for the future widening of Farrington Highway to three lanes in each direction. Roadway reconstruction and alterations also require the modification of turn lanes, the relocation of traffic signal systems, and modification of pedestrian and bicycle accommodations at the intersections along Farrington Highway.

The CITY’s Contractors shall be required to coordinate the safe, efficient, effective, and continued movement of traffic through the construction zone(s). Preliminary level Maintenance-of-Traffic (“MOT”) plans that are based on assumed column locations were coordinated with the

STATE. The MOT plans will be refined and finalized during detailed design work by the CITY's Contractors.

The existing median is landscaped along most of Farrington Highway. With the reconfiguration and installation of the GUIDEWAY FACILITY columns within the median, it will be necessary to remove the existing landscaping and install temporary landscaping until such time as final landscaping plans are developed for the stations and median.

Utilities relocation will involve both public and private utilities. There will be water, storm water, sanitary sewer, natural gas, fuel, electrical (both underground and overhead), communication (both underground and overhead), traffic signals and conduits, and some abandoned fuel lines that are identified as needing to be relocated and removed or capped.

See Exhibit "A" for the PROJECT Map. Should the description of the PROJECT change, the STATE and the CITY agree to amend this Article I and Exhibit "A" in an instrument in writing with a revised description.

## **ARTICLE II – PURPOSE OF THE AGREEMENT**

1. To coordinate and minimize the impact of the GUIDEWAY FACILITY on the STATE Highways;
2. To prescribe the respective responsibilities of the STATE and the CITY and establish cooperative procedures towards achieving the objectives identified herein;
3. To establish the terms and conditions under which the STATE will convey to the CITY and its Contractors rights to use certain STATE rights-of-way for the construction, operation, and maintenance of the GUIDEWAY FACILITY; and
4. To establish procedures to resolve any disputes between the STATE and the CITY arising in connection with the PROJECT and the GUIDEWAY FACILITY.

## **ARTICLE III – OPERATION AND MANAGEMENT RESPONSIBILITIES**

1. For the safe, effective and efficient operations of the STATE Highways system for the public and for the expeditious, effective and efficient design, construction, and operations of the PROJECT, the CITY will assume authority, control, operation, and maintenance responsibilities of the STATE Highways where the PROJECT is within the STATE Highway rights-of-way during construction of the GUIDEWAY FACILITY;
2. The STATE Highways over which the CITY will assume authority, control, operation, and maintenance responsibilities are portions of Farrington Highway ("CITY MAINTAINED STATE HIGHWAYS"), which are more specifically delineated in Exhibit "C", attached hereto and incorporated herein by reference;

3. If the location where the PROJECT is located within the STATE Highway rights-of-way during construction of the GUIDEWAY FACILITY should change, the STATE and the CITY agree to amend Exhibit "C" in an instrument in writing with a revised description of the CITY MAINTAINED STATE HIGHWAYS;
4. The CITY's operational and maintenance duties under this Article for the CITY MAINTAINED STATE HIGHWAYS and GUIDEWAY FACILITY shall commence upon the effective date of the Joint Use and Occupancy Agreement.;
5. Once the CITY has assumed the operational and maintenance duties of this Article over the CITY MAINTAINED STATE HIGHWAYS, the CITY shall perform the operational and maintenance duties of this Article until the STATE assumes the operational and maintenance duties as described in paragraph 11 of this Article;
6. The CITY agrees to assume sole authority and control to operate and maintain the CITY MAINTAINED STATE HIGHWAYS during construction of the GUIDEWAY FACILITY in accordance with STATE requirements, including, but not limited to, operations, maintenance and environmental work and reporting as required by law, rule, or regulation;
7. The CITY shall assume the total operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS during the construction of the GUIDEWAY FACILITY. The CITY MAINTAINED STATE HIGHWAYS shall be operated and maintained in accordance with current STATE policies, standards and guidelines. Such duties include, but are not limited to, the entire median, from curb face to curb face, for watering, weeding, fertilizing, mowing, reseeding, cultivating, spraying, mulching, trimming and care of shrubs and trees, edging, invasive plant removal and other services necessary for care and median plantings; curb repairs; sidewalk repairs; paving repairs; replacement of dead or damaged plants; street cleaning; cleaning and clearing of sidewalks, gutters, swales, and ditches; removal and disposal of trash and debris at no cost to the STATE, and further take reasonable measures to mitigate, at the CITY's own costs and expenses, any and all vehicular and pedestrian traffic safety and congestion impacts on the CITY MAINTAINED STATE HIGHWAYS during the construction of the GUIDEWAY FACILITY;
8. The CITY shall comply with the Consent Decree dated September 29, 2005, in the case of United States of America, Department of Health, State of Hawaii v. Department of Transportation, State of Hawaii, Civil No. 05-00636 HG, attached hereto as Exhibit "E" and incorporated by reference ("Consent Decree"), and the latest National Pollutant Discharge Elimination System Permit issued by the Department of Health, attached hereto as Exhibit "F" and incorporated by reference ("NPDES Permit") within the CITY MAINTAINED STATE HIGHWAYS;
9. Prior to the effective date of any Joint Use and Occupancy Agreements, the CITY shall at its own expense conduct a site inventory of the site covered by the said Joint Use and Occupancy Agreement to identify any existing environmental violations. The CITY shall notify the STATE of the results of such site inventory and shall provide the STATE with all testing results and reports from the site inventory. If the CITY contends that the site inventory has

identified environmental violations, the CITY and STATE shall attempt to negotiate a mutually acceptable resolution. At and as of the time the CITY assumes the operational and maintenance duties of this Article until the STATE assumes the operational and maintenance duties as described in this Article, the CITY shall be responsible for any environmental violations that arise out of, are connected with, or are otherwise related to the CITY's activities under this Master Agreement and shall be responsible for fines, mitigation requirements or other enforcement arising from said environmental violations regardless of when the enforcement action is taken or imposed;

10. The CITY shall return the CITY MAINTAINED STATE HIGHWAYS to the STATE in accordance with federal and State standards, and shall provide a warranty for any work performed by the CITY or the CITY's Contractors on these portions of Farrington Highway for twenty-four (24) months after STATE acceptance of PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS, such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT work, a copy of which is attached hereto as Exhibit "D" and incorporated by reference, the STATE acknowledges that it has reviewed and by signing this Master Agreement accepts the terms of such warranty;

11. The STATE shall assume the total operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS after the PROJECT is completed and accepted by the CITY, and the PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS is accepted by the STATE, which acceptance shall not be unreasonably withheld. Prior to the STATE assuming and accepting the operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS from the CITY, the CITY shall notify the STATE in writing of the proposed return of the operational and maintenance duties to the STATE and the CITY shall conduct a site inspection with the STATE on the acceptance of the CITY MAINTAINED STATE HIGHWAYS. Should the STATE have any objections to the PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS, the STATE shall have thirty (30) calendar days after the site inspection to submit a statement of written objections to the CITY, otherwise the STATE shall be deemed to have accepted such work and shall assume operational and maintenance duties over the CITY MAINTAINED STATE HIGHWAYS. Any written objections by the STATE shall be appropriately addressed by the CITY for acceptance by the STATE, which acceptance shall not be unreasonably withheld; and

12. After construction of the GUIDEWAY FACILITY is completed and the STATE has accepted the PROJECT work and maintenance work, the STATE will resume sole authority and control to operate and maintain the CITY MAINTAINED STATE HIGHWAYS in accordance with STATE requirements, including, but not limited to, operations, maintenance and environmental work and reporting as required by law, rule, or regulation.

#### **ARTICLE IV – DESIGN AND CONSTRUCTION MANAGEMENT CONSULTANT**

1. To carry out the terms of this Agreement in an expeditious, effective, and efficient manner, the CITY shall procure a Design and Construction Management Consultant to work under the direction and on behalf of the STATE to review, coordinate, and respond to the

PROJECT design submittals; to coordinate the STATE's projects and permits for the PROJECT; to perform required design reviews and construction inspections for the PROJECT; and to monitor compliance with the Consent Decree and the NPDES Permit;

2. The CITY and the STATE agree the Design and Construction Management Consultant shall coordinate the PROJECT with the STATE's projects and permits on the CITY MAINTAINED STATE HIGHWAYS;

3. The CITY agrees the Design and Construction Management Consultant will have adequate staff to carry out the functions identified in ARTICLE IV, Items 1 and 2;

4. The CITY shall provide adequate facilities for the Design and Construction Management Consultant, including, but not limited to, work space, office furniture and equipment;

5. The CITY agrees to fully fund the contract for the Design and Construction Management Consultant;

6. The CITY agrees to reimburse the STATE for any direct labor costs incurred for the STATE's review and coordination of the PROJECT, subject to the following:

- a. The STATE shall prepare and submit a staffing plan for approval by the CITY; and
- b. Eligible reimbursable direct labor costs shall be supported by periodic certifications or personnel activity reports or equivalent documentation pursuant to 2 C.F.R. Part 225, Appendix B, Section 8.h, including, but not limited to, timesheets signed by the employee and approved by a supervisor or other responsible official(s) of the governmental unit; and

7. Should the PROJECT be cancelled for any reason, the CITY shall terminate the contract for the Design and Construction Management Consultant for convenience.

## **ARTICLE V – DESIGN**

1. The CITY agrees that the STATE may review the PROJECT guideway Design-Build Contractors' technical proposals and provide comments to the CITY's selection committee;

2. The CITY shall submit to the STATE PROJECT-related design submittals that affect STATE rights-of-way on the CITY MAINTAINED STATE HIGHWAYS. The STATE will receive intermediate and semi-final design submittals for review. The STATE shall review and accept any design submittals of any facilities that affect the safety and/or operations of the CITY MAINTAINED STATE HIGHWAYS;

3. The CITY and the STATE agree that the final design drawings approved by the STATE shall constitute the final work scope for PROJECT construction insofar as the design affects the CITY MAINTAINED STATE HIGHWAYS;

4. The CITY has identified in Exhibit "C" the properties within the STATE's highway rights-of-way necessary for the CITY and its Contractors to complete the PROJECT as described in ARTICLE I and Exhibit "A";
5. The CITY shall provide to the STATE its Contractors' submittal schedules for review and the CITY agrees to address the STATE's design review process when reviewing the CITY's Contractors' schedules;
6. Relocation, modification and/or reconstruction of the STATE's facilities shall be in accordance with the latest and most current STATE and Federal policies, criteria, guidelines and manuals unless otherwise agreed to between the STATE and the CITY;
7. The STATE and the CITY acknowledge that timely STATE review of PROJECT-related design submittals is critical and therefore time is of the essence to maintaining the PROJECT schedule. The STATE shall have twenty-one (21) calendar days or a mutually agreed upon time frame for the STATE's review and approval;
8. The STATE's review of PROJECT-related design submittals which affect STATE highway facilities and the State Highway System will be limited to review for conformance to STATE and Federal design standards and requirements, and the CITY will be responsible for all other aspects of design;
9. The STATE and the CITY agree that an up-to-date and appropriately maintained website for the communication and collaboration between the STATE and the CITY on submittals for review will be implemented. The website will be developed, implemented and updated by the CITY as required;
10. The CITY shall submit to the STATE for review and approval any and all GUIDEWAY FACILITY design plans and specifications for future significant additions, changes, and alterations to, and modification and replacement of, any facilities within STATE rights-of-way insofar as such matters affect the safety and/or operations of the State Highway system within the limits of the PROJECT;
11. After the acceptance of the design plans and specifications by the CITY and the STATE, no significant or material changes that affect or impact the safety and/or operations of the State Highway, the Joint Use and Occupancy Agreement, or the Construction Permit may be made to the design plans and specifications unless agreed in writing by both parties. The CITY shall timely notify the STATE in writing of all minor, non-significant changes or modifications;
12. The CITY shall timely provide to the STATE for submittal to the Federal Highway Administration (FHWA) such drawings, data, reports, records, contracts, or other documents relating to the PROJECT as are necessary for the STATE and the FHWA to process an application to utilize land existing within the publicly acquired right-of-way of any Federal-Aid Highway for the PROJECT. All communication with FHWA will be through the STATE;

13. Within six (6) months after completion of the GUIDEWAY FACILITY, the CITY will furnish the STATE with “as-built” drawings. The “as-built” drawings shall conform to the STATE CADD software; and

14. Within six (6) months after completion of the GUIDEWAY FACILITY, the CITY will furnish the STATE with one (1) hardcopy and one (1) ‘.pdf’ electronic file of all design related reports.

## **ARTICLE VI – CONSTRUCTION**

1. Construction work related to the GUIDEWAY FACILITY shall be performed by the CITY and its Contractors. The STATE grants to the CITY and its Contractors the right to construct the PROJECT on, within, under, over, and across the CITY MAINTAINED STATE HIGHWAYS;

2. Prior to the initial entry by the CITY or its Contractors onto the CITY MAINTAINED STATE HIGHWAYS after execution of this Master Agreement and after the execution of the Joint Use and Occupancy Agreement, Exhibit “B”, the CITY shall notify the STATE in writing;

3. The CITY shall cause to be performed and the STATE agrees to the relocation, modification, or reconstruction of STATE facilities as necessitated for the GUIDEWAY FACILITY, including, but not limited to, streets, utilities, traffic signals, traffic signing, street lighting, signing, landscaping, street furniture and sidewalks, which shall be in accordance with the STATE and Federal design standards and requirements;

4. The replacement of or modifications to the STATE facilities as necessitated for the GUIDEWAY FACILITY and STATE and Federal design standards and requirements shall be at the CITY’s expense;

5. The CITY shall be responsible for any permits required for the GUIDEWAY FACILITY, including, but not limited to, construction and environmental permits;

6. All GUIDEWAY FACILITY schedules for construction work that relate to the safety and/or operation of the CITY MAINTAINED STATE HIGHWAYS shall be approved by the STATE;

7. All GUIDEWAY FACILITY work performed by the CITY’s Contractors related to the safety and/or operation of the CITY MAINTAINED STATE HIGHWAYS may be inspected by the STATE or its representatives;

8. The CITY shall coordinate with the STATE to keep the STATE informed of the GUIDEWAY FACILITY construction activities and complaints;

9. During construction, the STATE and the CITY shall agree to schedule joint meetings between STATE staff and CITY staff to review progress of construction and future actions;



10. The CITY shall be responsible for coordinating the modification and/or relocation of all existing utilities, including obtaining additional rights-of-way. Any and all work found to be unacceptable shall be appropriately addressed by the CITY for acceptance by the STATE;

11. Within the CITY MAINTAINED STATE HIGHWAYS, the CITY shall comply with the Consent Decree and the NPDES Permit. The CITY shall be responsible for environmental violations as set forth in Paragraph 9 of Article III of this Master Agreement; and

12. The CITY shall not allow additional runoff into the STATE drainage facilities unless the CITY demonstrates that retaining the additional runoff on-site is not practical and the additional runoff will have no negative impacts to the existing facility. The STATE will have the right to review and accept or deny such design.

#### **ARTICLE VII – BETTERMENTS**

1. The STATE in collaboration with the CITY may add betterments to the PROJECT scope of work when in the best interest of the public and feasible;

2. The STATE shall be solely responsible for all costs due to the betterments, including design and increased construction management expenses associated with the betterments, and all construction costs, unless otherwise agreed to by the CITY;

3. It is agreed that the betterment work and costs on the State Highways must be accepted by both the CITY and the STATE; and

4. Prior to the construction of any betterments, the CITY and the STATE shall enter into a separate written agreement regarding betterments that will specify, among other things, the funding and payment mechanisms for any betterments as provided in ARTICLE VII, Paragraph 2.

#### **ARTICLE VIII – TRAFFIC MANAGEMENT**

1. The construction of the GUIDEWAY FACILITY will cause increased traffic congestion for vehicular, bicycle, and pedestrian modes of travel, and the CITY shall develop and maintain traffic plans, such as maintenance of traffic plans and traffic control plans, to minimize traffic congestion to allow free and safe flow of vehicular, bicycle and pedestrian traffic, and emergency response efforts on this corridor during construction;

2. To further manage the traffic affected by the construction of the GUIDEWAY FACILITY during the construction of the PROJECT, the CITY agrees to procure a Transportation Management Consultant who shall be assigned and dedicated solely to manage the GUIDEWAY FACILITY's traffic plans in coordination with both the STATE and the CITY traffic operations offices until the PROJECT is fully operational;

3. The Transportation Management Consultant shall manage the PROJECT's traffic plans affected by the GUIDEWAY FACILITY;

4. The Transportation Management Consultant shall utilize existing Intelligent Transportation Systems (ITS) and the transportation management center capabilities to manage traffic on this corridor, implement new ITS strategies to complement existing ITS for the purpose of managing traffic effectively and efficiently on this corridor, and be responsible for all costs to implement new ITS strategies due to traffic impacts caused by the GUIDEWAY FACILITY;
5. The CITY's public involvement team will coordinate with the Transportation Management Consultant for the purpose of providing current information to the public and media;
6. The CITY agrees to solely fund the contract for the Transportation Management Consultant; and
7. Should the PROJECT be cancelled for any reason, the CITY shall terminate the contract for the Transportation Management Consultant for convenience.

#### **ARTICLE IX – PUBLIC OUTREACH**

1. It is agreed for the proper management of all surface modes of transportation on this corridor, public awareness and coordination is needed. The information needed for public awareness should include, but not be limited to, information on construction phasing and scheduling, traffic congestion levels, lane closures and detours; operations and management; aesthetic mitigation resulting from public concerns for the life of the PROJECT, as defined in this Master Agreement; and the public coordination required for public awareness, public outreach strategies and response capabilities; and
2. The CITY shall be responsible for the public outreach and awareness related to the PROJECT, and to respond to public inquiries and complaints.

#### **ARTICLE X – JOINT USE AND OCCUPANCY**

1. Upon the issuance of a Record of Decision by the Federal Transit Administration, the STATE and the CITY shall enter into a Joint Use and Occupancy Agreement for properties identified for the GUIDEWAY FACILITY, in a form similar in all material respects to the document attached as Exhibit "B" hereto, which is hereby incorporated into this Master Agreement by reference for all purposes.

#### **ARTICLE XI - MISCELLANEOUS**

1. Time of Essence. The STATE and the CITY acknowledge and agree that time is of the essence as to each and every obligation under this Master Agreement.
2. Compliance with Laws. The CITY shall complete the PROJECT in accordance with all applicable Federal, STATE, and CITY laws.

3. Funding. The CITY shall provide all the necessary funds for completion of the GUIDEWAY FACILITY through any of its available means. The STATE is under no obligation for funding for the GUIDEWAY FACILITY as a result of this Master Agreement. This paragraph does not apply to betterments.
4. No Third-Party Agreements. Except as otherwise authorized in writing by the STATE, the CITY shall not execute any contract or obligate itself in any manner requiring action/ approval from the STATE. The CITY will be responsible for payment to a third-party contractor retained by the CITY for the PROJECT.
5. Dispute Resolution. The parties shall resolve all disputes regarding all items in this Master Agreement at the lowest staff level possible. Disputes subject to this provision include, but are not limited to, the following: physical impacts, safety and operational impacts, long-term PROJECT impacts, regulatory impacts, design review and approval, personnel, additional rights-of-way, credits for funds expended, and preparation of additional intergovernmental agreements necessary to implement this Master Agreement. In the event the parties are unable to resolve disputes at the staff level, the Chief of the Rapid Transit Division, Department of Transportation Services, City and County of Honolulu, and the Highways Administrator, State of Hawaii Department of Transportation, shall resolve disputes. In the event the parties cannot resolve disputes at this level, the matter shall be referred to the Director, Department of Transportation Services, City and County of Honolulu, and the Director, State of Hawaii Department of Transportation, for resolution.
6. Except as stated in this Master Agreement, the STATE shall not incur any responsibility nor any liability under contract, tort or otherwise for any of its review and/or approvals for the GUIDEWAY FACILITY provided herein.
7. Indemnity. Notwithstanding any agreements to the contrary between the STATE and the CITY, the CITY shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this Master Agreement, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE. Without in any way limiting the CITY's obligations hereunder, in exercising the CITY's duty to defend, the CITY, in its sole discretion, may defend such claims with counsel of its choice, or reimburse the STATE for reasonable defense costs and attorneys' fees that will be processed for payment within the normal course of business.
8. Insurance. The CITY shall procure or cause to be procured and maintained during the term of this Master Agreement, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of,

connected with, or related to rights and responsibilities under this Master Agreement. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT, GUIDEWAY FACILITY and CITY MAINTAINED STATE HIGHWAYS shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall provide the STATE with thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release the CITY from its responsibilities under this Master Agreement or limit the amount or degree of the CITY's liability, and shall not be construed to transfer any liability from the STATE to the CITY.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide hereinabove.

9. No Obligation to Third Parties. There are no intended third party beneficiaries to this Master Agreement. It is expressly understood that the enforcement of the terms and conditions of this Master Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the CITY and the STATE, and nothing contained in this Master Agreement shall give or allow any legal or equitable remedy, claim, or right of action by any third person under this Master Agreement. It is the express intention of the parties that any third person who receives benefits under this Master Agreement shall be deemed an incidental beneficiary only.

10. Binding Effect. All provisions contained in this Master Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

11. Singular, Plural. All words used herein in the singular number shall extend to and include the plural. All words used in the gender shall extend to and include all genders.

12. Severability. The portions of this Master Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Master Agreement shall not affect any other provision or provisions of this Master Agreement, and each term or provision of this Master Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

13. Assignment. This Master Agreement is binding upon the parties and any agency of government that may assume the rights and obligations of a party with respect to the Master Agreement; otherwise the Master Agreement is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by each of the parties.

14. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this Master Agreement to which they may pertain.

15. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Master Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto. This Master Agreement cannot be modified except by an instrument, in writing, signed by each of the parties.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

CITY AND COUNTY OF  
HONOLULU

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
By: Rix Maurer III, Director  
Department of Budget & Fiscal Services  
City & County of Honolulu

By: \_\_\_\_\_  
Name: Brennon T. Morioka, Director  
Department of Transportation  
State of Hawaii

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
By: Wayne Y. Yoshioka, Director  
Department of Transportation Services

\_\_\_\_\_  
Deputy Attorney General

APPROVED AS TO FORM  
AND LEGALITY:

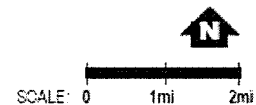
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Deputy Corporation Counsel

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# Exhibit “A”

## Project Map

## Project Map



## Jan 2009



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# Exhibit “B”

## Joint Use and Occupancy Agreement

**EXHIBIT "B"**

JOINT USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "Joint Use and Occupancy Agreement"), by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE", and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "CITY".

WITNESSETH THAT:

WHEREAS, pursuant to Hawaii Revised Statutes Section 51-1, the CITY is authorized to construct, extend, own, maintain and operate mass transit systems on the island of O`ahu;

WHEREAS, pursuant to CITY Ordinance 07-001, the CITY is authorized to implement the Locally Preferred Alternative (LPA), which is a fixed guideway transit system between Kapolei and the University of Hawaii (UH) at Manoa, provided that a Minimum Operable Segment (MOS) of the LPA be constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West O`ahu (near the future Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the CITY is constructing a mass transit system known as the Honolulu High-Capacity Transit Corridor Project within the limits of the West Oahu/Farrington Highway Section, hereinafter referred to as the "PROJECT";

WHEREAS, the PROJECT is proposed to be situated within highway rights-of-way which are under the jurisdiction, authority, and control of the STATE;

WHEREAS, the CITY and the STATE entered into the Master Agreement between the City and County of Honolulu and the State of Hawaii for the Honolulu High Capacity Transit Corridor Project Section from West Oahu to Farrington Highway, dated \_\_\_\_\_ (the "Master Agreement");

WHEREAS, in accordance with the terms of the Master Agreement, the CITY has identified certain properties within the STATE's rights-of-ways necessary for the CITY to complete the PROJECT;

WHEREAS, in accordance with the terms of the Master Agreement, the CITY and the STATE desire to enter into this Joint Use and Occupancy Agreement for the certain properties more specifically identified herein;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the CITY's PROJECT and transit facilities (hereinafter referred to as "GUIDEWAY FACILITY") within the STATE rights-of-way subject to the conditions herein; and

WHEREAS, the STATE does not object to granting the CITY's joint use and occupancy rights over the certain properties provided the CITY complies with the terms and conditions set forth below;

NOW, THEREFORE, the STATE and the CITY, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, hereby mutually agree as follows:

1. Premises. The STATE is the owner of and has jurisdiction, authority, control and possession of those certain parcels of land described in Exhibit "C" of the Master Agreement (hereinafter referred to as the "Premises").

2. Grant of Use and Occupancy Rights.

- a. The STATE hereby grants the CITY the joint right to use and occupy, on a non-exclusive basis, including surface, subsurface, and air space property, such portion of the Premises as shall be necessary to allow the construction, operation, and maintenance of the PROJECT for the life of the Honolulu High-Capacity Transit Corridor Project or for seventy-five (75) years or sooner termination, whichever occurs first.
- b. The location and extent of the Premises which may be utilized for PROJECT facilities, and the scope and nature of such use, shall be governed by the as-built drawings.

3. Right to Construct the PROJECT. The STATE grants to the CITY and its Contractors the right to construct and maintain the PROJECT on, within, under, over, and across the Premises. The CITY shall be solely responsible for all costs and expenses incurred in connection with the PROJECT and the maintenance of the PROJECT on the Premises, including, but not limited to, all design, planning, engineering, construction, alteration, and maintenance costs and expenses. The CITY's operation and maintenance responsibilities during PROJECT construction are set forth in Article III of the Master Agreement.

4. Consideration. In consideration for the CITY's right to use and occupy the Premises granted by the STATE to the CITY by this Joint Use and Occupancy Agreement, the CITY agrees as follows:

- a. The CITY agrees to construct, operate, and maintain the GUIDEWAY FACILITY as set forth in this Joint Use and Occupancy Agreement;

- b. The CITY agrees to provide regular service to the general public in the area served by the PROJECT; and
- c. The CITY shall be solely responsible for all costs and expenses incurred in connection with the PROJECT and the operation and maintenance of the PROJECT on the Premises as set forth herein, including, but not limited to, all design, planning, engineering, construction, alteration, and maintenance costs and expenses, including the costs to mitigate relocation of highway facilities, occupants or utilities due to the existence of the PROJECT.

5. Work Permit. The CITY shall request and the STATE shall promptly grant within twenty-one (21) calendar days or a mutually agreed upon time frame a permit for any construction, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work that affects the safety and/or operations of the STATE Highway within the Premises prior to commencing such work. In the case of an emergency, the STATE may grant the permit after the work remedying the emergency need has been performed.

6. Work Completion. Upon completion of any work performed on, within, under, over, or across the Premises by the CITY and its Contractors, the CITY and its Contractors shall remove therefrom all unused or surplus materials, if any, and shall restore the Premises and any other affected areas to a condition reasonably satisfactory and acceptable to the STATE. In addition, the CITY shall provide a warranty for the restoration work for a period of not less than twenty-four (24) months from the date of final inspection and acceptance by the STATE. Such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT work, a copy of which is attached to the Master Agreement as Exhibit "D" and incorporated by reference, the STATE acknowledges that it has reviewed and by signing this Joint Use and Occupancy Agreement accepts the terms of such warranty, and the warranty shall insure that the CITY shall be responsible for any failure of the restoration work.

7. Ownership of Improvements. Upon satisfactory completion of the fixed guideway improvements constructed pursuant to the PROJECT, the CITY shall accept such fixed guideway improvements as part of the fixed guideway transit system. Upon satisfactory completion of the roadway and related improvements to STATE Highways constructed pursuant to the PROJECT, the STATE shall accept such improvements as the STATE's public improvements.

8. Maintenance of CITY Improvements. The CITY shall, at its sole cost and expense, keep the PROJECT in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all necessary repairs to the PROJECT, and shall not make, permit, or suffer, any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the PROJECT.

9. Repair. The CITY shall not damage, undermine, or otherwise destroy any portion of STATE property, including, without limitation, any STATE Highway facilities or improvements situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and

underground utility systems. The CITY shall, at the written direction of the STATE, promptly, at its sole cost and expense, repair, restore, and reconstruct that portion of said STATE property so damaged, undermined, or destroyed, including any and all affected facilities, improvements, equipment, and appurtenances. Repair work shall be designed and constructed in accordance with all applicable STATE and federal standards and requirements.

10. No Obstruction. The CITY shall not construct, replace, repair, or maintain any landscaping or any portion of the PROJECT on, within, under, over, or across the Premises in such a manner as to (a) unreasonably obstruct traffic, (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the STATE Highway, except as agreed to by the parties, or (c) otherwise constitute a hazard to users of the STATE Highway, as determined by the STATE.

11. STATE Work Within or Affecting the fixed guideway transit system. If the STATE performs work of any kind on, within, under, over, across, near, or affecting the fixed guideway transit system, the STATE will coordinate such work with the CITY. The CITY shall not prevent the STATE from performing such work, provided, however, that the STATE will take the necessary protective measures to assure that such work does not unreasonably interfere with the CITY's use of the fixed guideway transit system. The STATE must secure approval from the CITY if the proposed STATE work interferes with the operation and/or safety of the fixed guideway transit system.

12. Indemnity. Notwithstanding any agreements to the contrary between the STATE and the CITY, the CITY shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this Joint Use and Occupancy Agreement, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE. Without in any way limiting the CITY's obligations hereunder, in exercising the CITY's duty to defend, the CITY, in its sole discretion, may defend such claims with counsel of its choice, or reimburse the STATE for reasonable defense costs and attorneys' fees that will be processed for payment within the normal course of business.

13. No Obligation to Third Parties. There are no intended third party beneficiaries to this Joint Use and Occupancy Agreement. It is expressly understood that the enforcement of the terms and conditions of this Joint Use and Occupancy Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the CITY and the STATE, and nothing contained in this Joint Use and Occupancy Agreement shall give or allow any legal or equitable remedy, claim, or right of action by any third person under this Joint Use and Occupancy Agreement. It is the express intention of the parties that any third person who receives benefits under this Joint Use and Occupancy Agreement shall be deemed an incidental beneficiary only.

14. Insurance. The CITY shall procure or cause to be procured and maintained during the term of the Joint Use and Occupancy Agreement, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of, connected with, or related to rights and responsibilities under this Joint Use and Occupancy Agreement. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT and GUIDEWAY FACILITY shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall provide the STATE with thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release the CITY from its responsibilities under this Joint Use and Occupancy Agreement or limit the amount or degree of the CITY's liability, and shall not be construed to transfer any liability from the STATE to the CITY.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide hereinabove.

15. Assignment. The CITY's rights under this Joint Use and Occupancy Agreement, in whole or in part, shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except to an agency of government that may assume the rights and obligations of the CITY with respect to the Joint Use and Occupancy Agreement; otherwise, the CITY may not assign its interest without the prior written consent of the STATE. In giving any such consent, the STATE need not release the CITY from any liabilities or obligations hereunder.

16. Default.

a. Notice of default. If the CITY defaults on or otherwise fails to perform the CITY's obligations under this Joint Use and Occupancy Agreement, the STATE will issue a written notice of default to the CITY by receipted hand-delivery or certified mail, return receipt requested.

b. The CITY to Cure Defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the STATE's reasonable satisfaction within one hundred eighty (180) calendar days of the date of the STATE's written notice to the CITY or such further time as may be authorized by the STATE in writing. The CITY's failure to construct the PROJECT in substantial accordance with the plans and specifications accepted by the STATE shall be deemed a default of this Joint Use and Occupancy Agreement.

c. STATE Remedies for Failure to Cure. If the CITY fails to cure said defaults or failures to perform within the required time period, the STATE itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the CITY, who shall promptly pay said costs and expenses to the STATE upon receiving notice from the STATE. If the CITY defaults or fails to perform as required under this Joint Use and Occupancy Agreement, the State shall be entitled to all remedies available under this Joint Use and Occupancy Agreement and by law, which remedies shall be cumulative and not exclusive.

17. Abandonment. This Joint Use and Occupancy Agreement and all of the CITY's rights hereunder shall terminate, without any action on the part of the STATE, in the event of non-use or abandonment by the CITY of the Premises, or any portion thereof, for a continuous period of five (5) years.

18. Termination. This Joint Use and Occupancy Agreement shall not be terminated or cancelled in whole or in part until the expiration of the life of the PROJECT or seventy-five (75) years, whichever occurs first, except as provided in paragraph 17 (Abandonment). Any termination or cancellation of this Joint Use and Occupancy Agreement, in whole or in part, shall not relieve the CITY of its obligations to indemnify, defend and/or hold harmless the STATE pursuant to paragraphs 12 (Indemnity) and 19 (Hazardous Materials) herein with respect to any obligations arising prior to such termination or cancellation of all or a portion of this Joint Use and Occupancy Agreement.

19. Hazardous Materials.

a. STATE pre-approval required. The CITY shall not, without the written prior approval of the STATE, the exercise of which approval is in the sole and absolute discretion of the STATE, cause or permit the escape, disposal, discharge, or release of any hazardous materials except as permitted by law. The CITY shall not allow the storage or use of such materials in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into the Premises any such materials except to use in the ordinary course of the CITY's business, and then only after written request is made to the STATE identifying such materials and upon the STATE's written consent, which consent may not be unreasonably withheld. As used in this paragraph 19, the "presence, escape, disposal, discharge, or release of hazardous materials" includes, but is not limited to, oil, fuel, and polychlorinated biphenyl (PCB) spillage or leakage, improper waste oil disposal, or pollution of any water attributable to the CITY's (a) operations and activities on or connected with the Premises or (b) use and occupancy of the Premises.

b. The CITY's best knowledge and belief. If any lender or governmental agency shall ever require testing to ascertain whether or not the CITY has caused or permitted the escape, disposal, discharge, or release of hazardous materials, then the CITY shall be responsible for the reasonable costs thereof. Hazardous materials pre-existing on the CITY MAINTAINED STATE HIGHWAYS, as defined in the Master Agreement and more specifically delineated in Exhibit "C" of the Master Agreement, shall be administered in accordance with Article III of the Master Agreement. The CITY shall execute affidavits,



representations and the like from time to time concerning the CITY's best knowledge and belief regarding the presence of hazardous materials on, within, or under the CITY MAINTAINED STATE HIGHWAYS and/or the escape, disposal, discharge, or release of hazardous materials therefrom.

c. Indemnity. Notwithstanding any agreements to the contrary between the STATE and the CITY, the CITY shall hold harmless, defend, indemnify and insure the STATE as an Additionally Named Insured where appropriate, including, but not limited to, under any CITY excess policies of insurance and when the CITY is named as an Additionally Named Insured under policies of insurance provided by its Contractors, from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to Hazardous Materials within the PROJECT, GUIDEWAY FACILITY and CITY MAINTAINED STATE HIGHWAYS.

d. "Hazardous materials" definition. For the purposes of this Joint Use and Occupancy Agreement, "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Clean Water Act, all as amended, or any other federal, State, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

e. The CITY's clean-up obligation. Upon termination of this Joint Use and Occupancy Agreement, the CITY shall, at the CITY's sole cost and expense, clean up and decontaminate the Premises and remove all hazardous materials therefrom, including, without limitation, clean-up of surface and ground waters to the extent practicable, making the soil free and clear of all contaminants and hazardous materials. The CITY shall not be responsible for any hazardous materials pre-existing on the Premises prior to the execution of the Joint Use and Occupancy Agreement or which intrudes into the Premises from activities unrelated to the CITY or the PROJECT.

f. Protection of waters. The CITY shall maintain and employ debris, pollution, and contamination control measures, safeguards, and techniques to prevent debris, pollution, or contamination to ocean waters, streams, or waterways resulting from the activities or operations of the CITY, and the CITY's invitees and agents on, within, under, over, across, through, or connected with the Premises, and shall take prompt corrective action upon actual notice of the event of such pollution or contamination to promptly remove the cause of such pollution or contamination, and shall immediately clean the Premises and affected areas and surrounding waters of such pollutant or contaminant and restore to the STATE's reasonable satisfaction the areas affected by such pollution or contamination, all at the CITY's own cost and expense.

20. End of the Joint Use and Occupancy Agreement. Upon the expiration of the life of the PROJECT or seventy-five (75) years, whichever occurs first, the parties agree to negotiate

a new Joint Use and Occupancy Agreement to allow the continued operation and maintenance of the PROJECT on the Premises.

21. Removal of the PROJECT. Upon the expiration of the life of the PROJECT or seventy-five (75) years, whichever occurs first, and if a new Joint Use and Occupancy Agreement has not been agreed to by the parties as provided under paragraph 20 (End of the Joint Use and Occupancy Agreement), or upon abandonment as provided in paragraph 17 (Abandonment), the CITY shall, at the CITY's sole cost and expense:

a. Remove and Restore. Remove any and all portions of the PROJECT installed or constructed on, within, under, over, or across the Premises and any improvements, equipment, facilities, components, and appurtenances relating thereto and restore the Premises to the reasonable satisfaction of the STATE to a condition equal to current standards or better than existed prior to the commencement of this Joint Use and Occupancy Agreement. If the CITY fails to restore the Premises to a condition reasonably satisfactory to the STATE, the STATE shall have the right to charge the CITY, and the CITY shall be solely responsible for, any and all reasonable costs and expenses incurred by the STATE in completing and accomplishing such restoration, including, but not limited to, any costs the STATE incurs in removing and disposing of the CITY's property; or

b. STATE's Option. At the STATE's option, abandon in place the PROJECT and any improvements, equipment, facilities, components, and appurtenances relating thereto; provided, however, that such termination or cancellation shall not relieve the CITY of its obligations to indemnify, defend, and/or hold harmless the STATE pursuant to paragraphs 12 (Indemnity) and 19 (Hazardous Materials) herein with respect to any such obligations arising prior to such termination or cancellation of all or a portion of this Joint Use and Occupancy Agreement.

22. Compliance with Laws. The CITY, at all times during the term of this Joint Use and Occupancy Agreement, shall comply with and observe all of the requirements of all Federal, STATE, and CITY laws, statutes, ordinances, rules, and regulations now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or Federal-aid Highways.

23. Binding Effect. All provisions contained in this Joint Use and Occupancy Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

24. Singular, Plural. All words used herein in the singular number shall extend to and include the plural. All words used in the gender shall extend to and include all genders.

25. Severability. The portions of this Joint Use and Occupancy Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Joint Use and Occupancy Agreement shall not affect any other provision or provisions of this Joint Use and Occupancy Agreement, and each term or provision of this Joint Use and

Occupancy Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

26. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this Joint Use and Occupancy Agreement to which they may pertain.

27. Drafting of Agreement. The parties expressly acknowledge that this Joint Use and Occupancy Agreement is the product of mutual negotiations; that each has had ample opportunity to read the Joint Use and Occupancy Agreement; that each has had any questions or concerns completely explained by independent counsel and is satisfied that this Joint Use and Occupancy Agreement accurately conveys the meanings and intents it chooses to be bound by; and, it is expressly agreed that neither party shall be construed to be the primary drafter thereof.

28. Survivability. All obligations arising prior to termination of this Joint Use and Occupancy Agreement, all obligations of the parties to be completed following termination of the Joint Use and Occupancy Agreement, and all paragraphs of this Joint Use and Occupancy Agreement allocating responsibility or liability between the parties shall survive the termination of this Joint Use and Occupancy Agreement.

29. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Joint Use and Occupancy Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto. This Joint Use and Occupancy Agreement cannot be modified except by an instrument, in writing, signed by each of the parties.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written:

CITY AND COUNTY OF  
HONOLULU

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
By: Rix Maurer III, Director  
Department of Budget & Fiscal Services  
City & County of Honolulu

By: \_\_\_\_\_  
Name: Brennon T. Morioka, Director  
Department of Transportation  
State of Hawaii

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
By: Wayne Y. Yoshioka, Director  
Department of Transportation Services

\_\_\_\_\_  
Deputy Attorney General

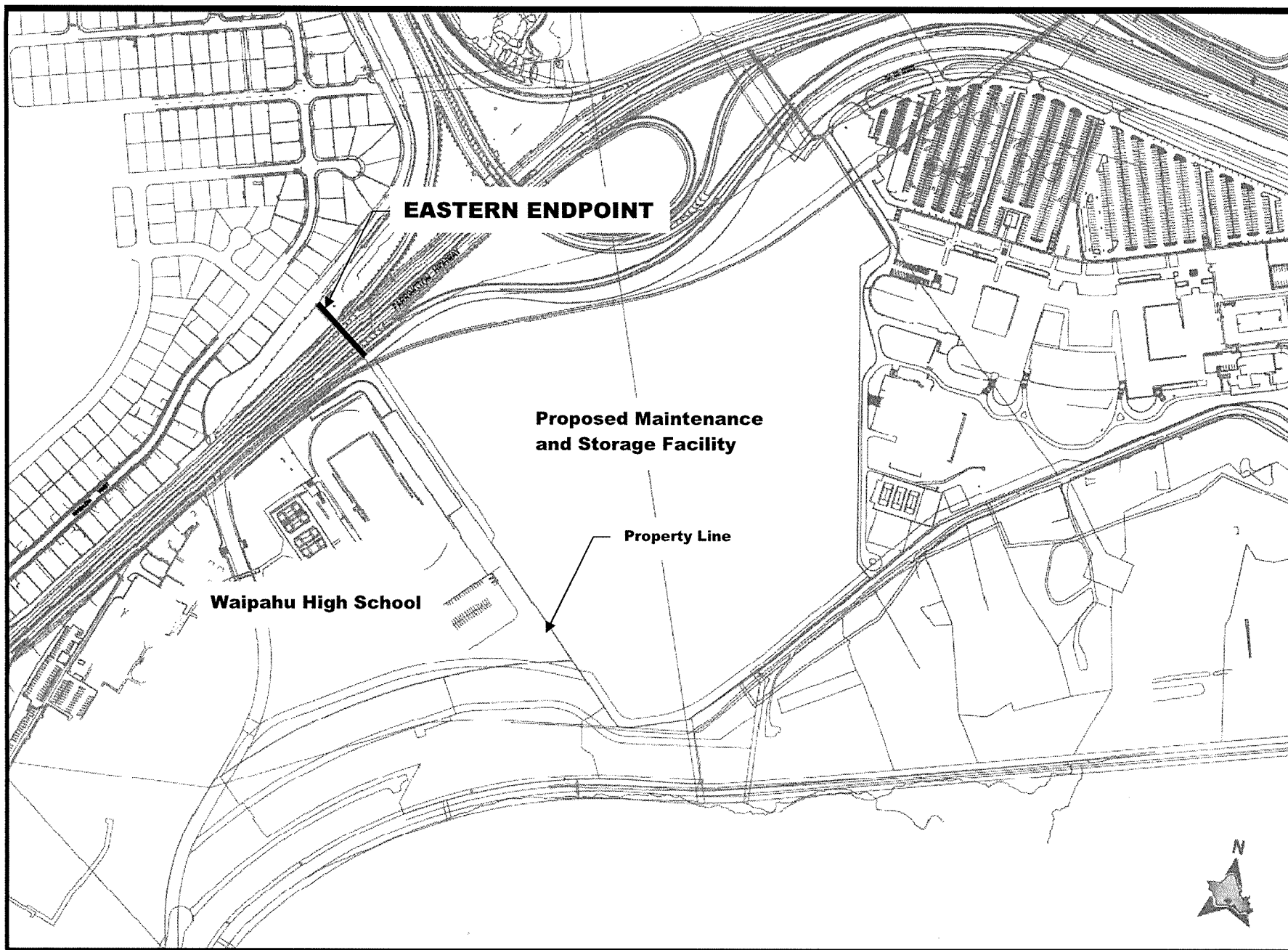
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AND LEGALITY:

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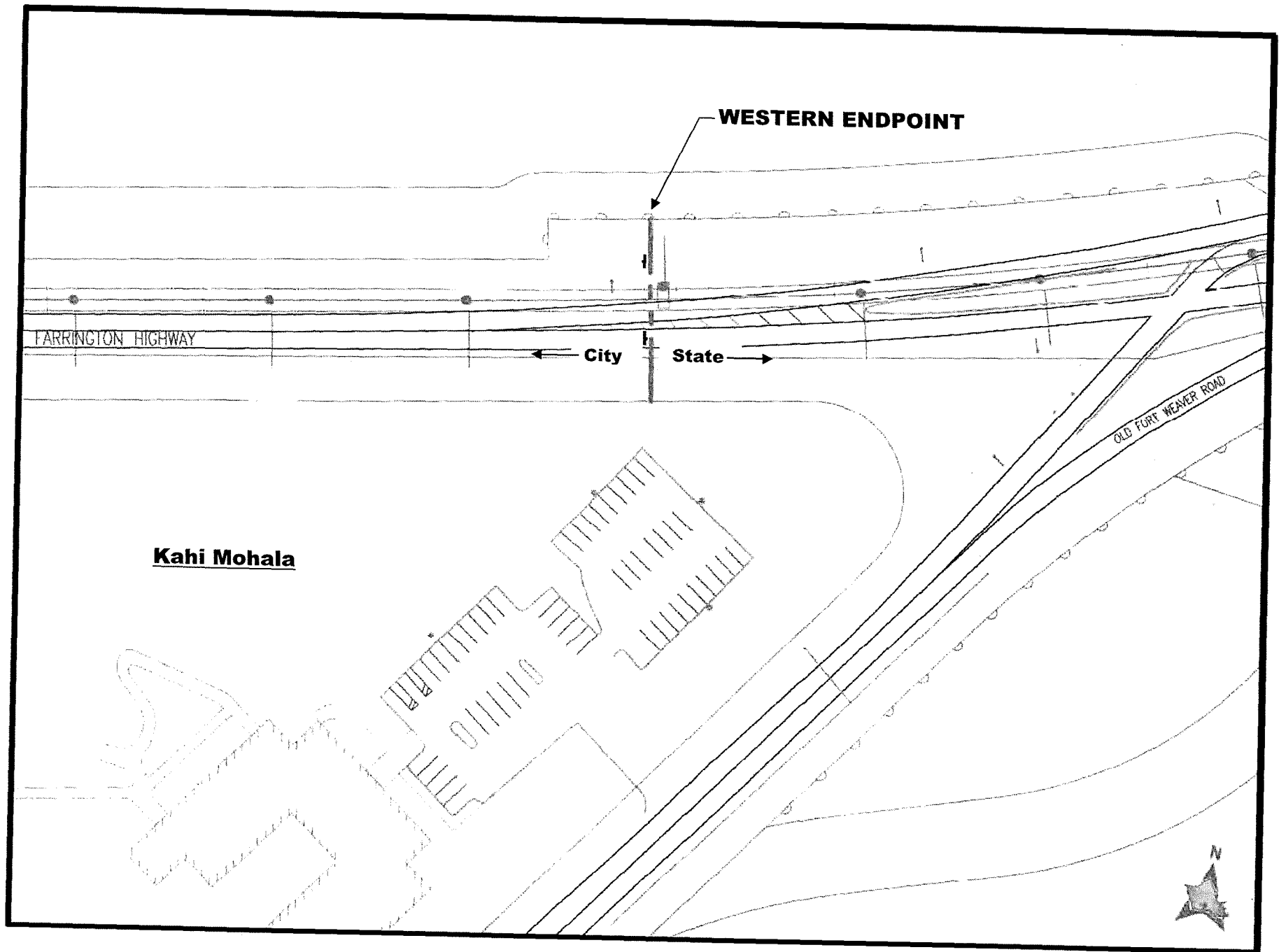
Deputy Corporation Counsel

# Exhibit “C”

## City Maintained State Highway Boundary



## **FARRINGTON HIGHWAY EASTERN ENDPOINT**



**FARRINGTON HIGHWAY WESTERN ENDPOINT**

# Exhibit “D”

The following Section 4.26 of the General Conditions of Design-Build Contracts City and County of Honolulu (02/2009) describes the terms of the CITY’s warranty to the STATE, pursuant to the terms of Article III, Paragraph 10 of the Master Agreement. Section 4.26(e) is not applicable to the extent that it limits the guarantee period for a period of one year upon final acceptance of the work by the Officer-in-Charge; for the purposes of the Master Agreement the guarantee period of the CITY’s warranty to the STATE is twenty-four (24) months after STATE acceptance of PROJECT work and maintenance work.



(e) When the Officer-in-Charge determines that the project is substantially complete, a pre-final inspection will be conducted by the Officer-in-Charge along with representatives of other City agencies interested in the project, within seven days of receipt of the request from the Contractor.

(f) If the pre-final inspection discloses only minor discrepancies, the Officer-in-Charge shall accept the project as substantially complete and issue in writing, a list of the discrepancies that need to be corrected including all documents required by the Contract, hereinafter referred to as the "punch list," and the time in which the Contractor must complete the punch list. The date of acceptance of the project as substantially complete shall signify the end of the contract completion time.

(g) The Contractor shall, **within seven days** after receipt of the punch list, proceed to complete the items on the punch list. Upon completion, the Contractor shall submit a written request for a final inspection, after which, if the Officer-in-Charge finds that all discrepancies are satisfactorily corrected, the Officer-in-Charge will accept the project as completed, hereinafter referred to as "final acceptance."

(h) Noncompliance. If the Contractor fails to proceed or complete the punch list within the specified times, the Officer-in-Charge may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(i) Upon final acceptance, the Contractor shall be relieved of its responsibility in maintaining and protecting the work and site and for injury to persons or property. Release of final payment shall be as specified in section 6.7, "Final Payment."

(j) Prior to release of final payment, the Contractor shall submit, **within thirty days** after final acceptance, or within such time as the Officer-in-Charge may allow, all remaining documents required by the Contract.

**4.26 Guarantee.** (a) This guarantee shall be deemed supplemental to guarantee provisions provided in other sections of the specifications for the individual units and systems of units so specified.

(b) Performance. The Contractor guarantees its performance and the performance of its subcontractors under the contract.

(c) Materials and equipment. The Contractor also guarantees all materials and equipment furnished or installed under the contract against defects and poor workmanship and to be in operable condition upon final acceptance of the work or portions of the work, and that all such materials and equipment conform to the requirements of this contract and be fit for the use intended.

(d) Design. The Contractor guarantees the design to meet the criteria and operating requirements specified and against failure to perform in accordance with such criteria and operating requirements.

(e) Guarantee period. Unless otherwise specifically stated in the RFP that a longer period is intended, the guarantee shall extend for a period of one year upon final acceptance of the work by the Officer-in-Charge and shall include all labor, materials, equipment and parts. The Officer-in-Charge may also determine the guarantee period to commence upon acceptance of the material or equipment installed, or

work performed. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under the terms of this guarantee, for a like period of one year. The Contractor shall provide a new certificate of guarantee for the extended one-year period.

(f) **Correction.** The Contractor shall correct all defects or failures discovered within the guarantee period. The City will give the Contractor prompt written notice of such defects or failures following their discovery. The Contractor shall commence corrective work **within seven days** following notification and shall diligently prosecute such work to completion. The Contractor shall bear all costs of corrective work, which shall include necessary disassembly, transportation, reassembly and retesting, as well as repair or replacement of the defective materials or equipment and any necessary disassembly and reassembly of adjacent work.

(g) **Noncompliance.** If the Contractor fails to perform corrective work in the manner and within the time stated, the City may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(h) **Performance bond.** Unless otherwise specifically stated in the RFP that a longer period is intended, the performance bond shall be in full force and effect for the duration of the contract and for a period of one year after final acceptance of the contract by the Officer-in-Charge.

(i) **Rights and remedies.** The rights and remedies of the City under this provision do not preclude the exercise of any other rights or remedies provided by this contract or by law with respect to unsatisfactory work performed by the Contractor.

**4.27 As-built drawings.** The Contractor shall maintain at the job site two (2) sets of full size contract drawings, marking them in red to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed herein, or where variations in scope or character of work from that of the original contract are authorized, the drawings shall be marked to define the construction actually provided. Where equipment installation is involved, the size, manufacturer's name, model number and power input or output characteristics, as applicable, shall be shown on the as-built drawings. The representations of such changes shall conform to standards and details as necessary to clearly portray the as-built construction.

The drawings shall be maintained and updated on a daily basis. Monthly and final payments to the Contractor shall be subject to prior approval of the updated drawings, including approved Change Order changes to design.

On completion of the work, both sets of marked-up drawings shall be delivered to the Officer-in-Charge and shall be subject to the Officer-in-Charge's approval before acceptance.

# Exhibit “E”

United States of America, Department of Health, State of Hawaii v.  
Department of Transportation, State of Hawaii, Civil No. 05-00636 HG

Consent Decree dated September 29, 2005

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,  
DEPARTMENT OF HEALTH, STATE  
OF HAWAII,

Plaintiffs,

v.

DEPARTMENT OF TRANSPORTATION,  
STATE OF HAWAII

Defendant.

CIVIL ACTION NO.

CONSENT DECREE  
WITH APPENDICES A - G

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1 The United States of America, on behalf of the United States Environmental Protection  
2 Agency ("EPA"), has filed a Complaint in this matter alleging that the Hawai'i Department of  
3 Transportation ("HDOT") has violated provisions of the Clean Water Act ("Act"), 33 U.S.C.  
4 §§1251– 1387, and the regulations promulgated pursuant to the Act, including the conditions and  
5 limitations of the Hawai'i General Construction Activities Storm Water Permit, HAR 11-55  
6 Appendix C; the Hawai'i General Industrial Activities Storm Water Permit, HAR 11-55  
7 Appendix B; HDOT's Honolulu International Airport NPDES permit, Permit No. HI0021440;  
8 and HDOT's Municipal Separate Storm Sewer System NPDES permit ("MS4") for Oahu, Permit  
9 No. HI0021245 (to be reissued as No. HIS000001). The State of Hawai'i, on behalf of the  
10 Hawai'i Department of Health ("DOH"), joined in the Complaint to bring claims against  
11 Defendants for violations of State law.

12 The Parties recognize, and the Court by entering this Consent Decree finds, that this  
13 Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between  
14 the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

15 NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without  
16 adjudication or admission of any issue of fact or law, and upon consent and agreement of the  
17 Parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

18 **I. GENERAL PROVISIONS**

19 1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this  
20 action and over the parties pursuant to 33 U.S.C. §§1319 & 1365 and pursuant to 28 U.S.C.  
21 §§ 1331, 1345, 1355 & 1367. The Complaint states claims upon which relief may be granted  
22 under 33 U.S.C. §1319 and under applicable provisions of State law. Venue is proper in this  
23 District under 33 U.S.C. § 1319(b) and under 28 U.S.C. §§ 1391(b) and (c) & 1395(a), because  
24 the defendant may be found here and because the transactions and occurrences giving rise to the  
25 Complaint occurred here. For purposes of the Decree, HDOT consents to and will not contest  
26 the Court's exercise of personal jurisdiction over HDOT or venue in this District.

1           2.     Parties Bound. The obligations of this Consent Decree apply to and are binding  
2 upon the United States and DOH and upon HDOT and any successors agencies or other entities  
3 or persons otherwise bound by law. Within 10 business days of entry of this Decree, HDOT shall  
4 provide a copy of this Decree to each Manager, each Project Superintendent, and each firm  
5 retained by HDOT to implement this Decree. If, more than 10 business days after entry of this  
6 Decree, a Manager, Project Superintendent, or other person or firm becomes an employee of  
7 HDOT or is retained by HDOT to implement provisions of this Decree, HDOT shall provide  
8 such person or firm a copy of the Decree within 10 business days of such employment or  
9 retention.

10           3.     Definitions. Except as specifically provided in this Decree, definitions for the  
11 terms used in this Decree shall be incorporated from the Clean Water Act and the regulations  
12 promulgated pursuant to the Act. Whenever terms listed below are used in this Decree, the  
13 following definitions apply:

14                 a.     “Acceptable evidence”, for the purposes of Paragraphs 21.c and 24.b,  
15 below includes invoices, purchase orders, or other documentation that specifically  
16 identifies and itemizes the individual costs of the goods or services for which payment is  
17 made. Canceled drafts do not constitute acceptable evidence unless such drafts  
18 specifically identify and itemize the individual costs of the goods or services for which  
19 payment is made.

20                 b.     Best Management Practices (“BMPs”) shall have the meaning set forth in  
21 40 C.F.R. § 122.2 which states that BMPs “mean schedules of activities, prohibitions of  
22 practices, maintenance procedures, and other management practices to prevent or reduce  
23 the pollution of ‘waters of the United States’.” BMPs also include treatment  
24 requirements, operating procedures, and practices to control plant site runoff, spillage or  
25 leaks, sludge or waste disposal, or drainage from raw material storage.”  
26  
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1 c. BMP Program Plan ("BMPPP") shall mean a programmatic chapter under  
2 the Storm Water Management Program Plan ("SWMPP") that meets the terms and  
3 conditions of the MS4 permit and the requirements of Section V of this Consent Decree  
4 (Injunctive Relief).

5 d. "Clean Water Act" or "Act" shall mean the Federal Water Pollution  
6 Control Act, as amended, 33 U.S.C. §§ 1251–1387.

7 e. "Connection Permit" shall mean a permit issued by HDOT for physical  
8 connections into its Oahu MS4.

9 f. "Critical deficiencies" for purposes of Paragraph 10.g.(2) shall mean those  
10 deficiencies that pose an immediate threat for the discharge of pollutants to the storm  
11 drain system, surface waters, or State waters. Critical deficiencies include, but are not  
12 limited to, the following examples:

13 (1) Any observed discharge, or evidence of discharge, of untreated  
14 storm water or non-storm water to the storm drain system, surface waters, or State  
15 waters generated by the construction activity.

16 (2) Absence of linear barriers and/or perimeter controls required by the  
17 BMP Plan.

18 (3) There are identified storm drain inlets, surface waters, or State  
19 waters within or adjacent to the project site in close proximity to disturbed soil  
20 areas without control measures in place that pose an immediate threat of untreated  
21 storm water discharges.

22 (4) Work in an active stream channel or other surface water body  
23 without proper implementation of required BMPs.

24 (5) Presence of any spilled oil or hazardous materials near to  
25 unprotected storm drain inlet, surface waters, or State waters.  
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1           g.       “Day” shall mean a calendar day unless otherwise specified to be a  
2 working day. “Business Day” shall mean a day other than a Saturday, Sunday, State or  
3 Federal legal holiday. In computing a prescribed period of time, the day of the event shall  
4 not be included. If a stated time period expires on a Saturday, Sunday, State or Federal  
5 legal holiday, it shall be extended to include the next working day.

6           h.       “Discharge Permit” shall mean a permit issued by HDOT for discharges  
7 into its Oahu MS4.

8           i.       “DOH” shall mean the Hawai’i Department of Health and any of its  
9 successor departments, agencies, or instrumentalities.

10          j.       “Encroachment permit project” shall mean a construction project  
11 undertaken by a third party within one of HDOT’s rights-of-way and that requires the  
12 issuance by HDOT of a “Permit to Perform Work Upon State Highways”.

13          k.       “EPA” shall mean the United States Environmental Protection Agency and  
14 any of its successor departments, agencies, or instrumentalities.

15          l.       “General Construction Activities Storm Water Permit” refers to the permit  
16 issued by DOH for Construction Activities, HAR 11-55 Appendix C.

17          m.       “General Industrial Activities Storm Water Permit” refers to the permit  
18 issued by DOH for Industrial Activities, HAR 11-55 Appendix B.

19          n.       “High Priority Watersheds” shall mean those depicted at Appendix A  
20 which is incorporated herein by reference.

21          o.       “Industrial Activity” shall have the meaning set forth in 40 C.F.R. §  
22 122.26(b)(14)(i)-(xi), excluding 40 C.F.R. § 122.26(b)(14)(x).

23          p.       “Inspection” for purposes of Paragraph 10.k.(2) shall mean, at a minimum,  
24               (1)    Visual inspection of the inlet(s) and/or point of connection to the  
25 MS4 for evidence of the presence of pollutants or other illegal discharges;  
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(2) Visual inspection of the tributary area for potential sources of pollutants exposed to stormwater and the presence of BMPs, if any, employed to prevent the discharge of those pollutants to the MS4; and

(3) Discussion with a facility representative to ensure that they know the difference between allowable discharges to the MS4 and pollutant discharges which are not allowed to be discharged to the MS4.

q. "Major deficiencies" for purposes of Paragraph 10.g.(2) shall mean those deficiencies that are significant problems which could result in the discharge of pollutants to the storm drain system, surface waters, or State waters. Major deficiencies include, but are not limited to, the following examples:

(1) No Best Management Practices (BMP) Plan or NPDES permit (if required).

(2) Linear barriers and/or perimeter controls in areas tributary to a water body or drain inlet are installed as required by the BMP Plan, but are not functional. This includes silt fences that are not anchored properly, have collapsed, been driven over or overwhelmed by accumulated sediment.

(3) Hazardous materials or waste is stored within the project without containment or implementation of BMPs.

(4) Oil, fuel, or brake or transmission fluid spills covering more than one square yard and/or adjacent to protected storm drain inlets, surface waters, or State waters.

(5) Any discharge of sediment or other deleterious material resulting from dewatering operations conducted without implementation of required BMPs for dewatering.

(6) Sediment tracking more than 50 feet from project ingress/egress location(s).

1 (7) Expansion of the active disturbed soil area limit without written  
2 approval.

3 (8) Soil stabilization and sediment controls are not installed in  
4 accordance with applicable construction site BMP Plan.

5 (9) Sediment controls are installed in accordance with the BMP Plan,  
6 but there is a large unstabilized disturbed soil area with insufficient controls  
7 downgradient to prevent the discharge of untreated storm water to the storm drain  
8 system, surface waters, or State waters if a rain event generates runoff.

9 (10) Dust from project site visibly blowing off the site and into storm  
10 drain conveyances or adjacent surface water bodies.

11 r. "Master Consultant" shall mean the consultant or consultants procured by  
12 HDOT in order to provide various functions in support of the requirements of this  
13 Consent Decree.

14 s. "Minor deficiencies" for purposes of Paragraph 10.g.(2) shall mean those  
15 deficiencies that do not pose a threat for discharge of untreated storm water or pollutants  
16 to the storm drain system, surface waters, or State waters, but are not in strict  
17 conformance with the SWPPP or BMP Plan. Minor deficiencies include, but are not  
18 limited to, the following examples:

19 (1) BMP Plan does not reflect current operations and an amendment is  
20 recommended.

21 (2) BMPs are not deficient, but are not consistent with the BMP Plan.

22 (3) Linear barriers and/or perimeter controls are installed as required  
23 by the BMP Plan, but require minor maintenance. For example, a silt fence which  
24 is not anchored properly throughout the entire length or an inlet protection device  
25 with some accumulated silt.

1 (4) Soil stabilization or sediment controls are installed as required by  
2 the BMP Plan, but not properly maintained.

3 (5) Site inspections by project staff are not being conducted at the  
4 required frequencies.

5 (6) Non-storm water or waste management BMPs improperly  
6 maintained.

7 (7) Oil, fuel, or brake or transmission fluid spills covering less than  
8 one square yard and not adjacent to storm drain inlets, surface waters, or State  
9 waters.

10 (8) Evidence of active wind erosion on unstabilized slopes/stock piles.

11 (9) Minor tracking less than 50 feet from project ingress/egress  
12 locations.

13 (10) Major deficiencies which are corrected prior to the inspector  
14 leaving the site.

15 t. "MS4 Permit" refers to the NPDES permit issued by DOH to HDOT  
16 Highways Division for discharges from HDOT's municipal separate storm sewer system  
17 on the Island of Oahu and designated as Permit No. HI0021245 and to be reissued as No.  
18 HIS000001.

19 u. "Notice of Intent" shall mean a request for coverage under a General  
20 Permit.

21 v. "Parties" means the United States, on behalf of EPA; the State, on behalf  
22 of DOH; and HDOT.

23 w. "Responsible Officer" shall mean an official of HDOT in charge of storm  
24 water program functions for either the Highways Division or the Airports Division, or any  
25 other person who performs similar policy or decision making functions for HDOT and is  
26 authorized as set forth at 40 C.F.R. § 122.22.

1           x.       “SEPs” shall mean the Supplemental Environmental Projects to be  
2 performed under this Decree and more fully described in Section VII, below.

3           y.       “Service Contractor” shall mean the contractor or contractors procured by  
4 HDOT in order to provide various services in support of the requirements of this Consent  
5 Decree.

6           z.       “Site” shall mean any location in the State of Hawai‘i that HDOT owns,  
7 leases, or operates, and at which there is or will be construction resulting in ground-  
8 disturbing activities greater than or equal to one acre or that is otherwise subject to the  
9 NPDES storm water construction regulations set forth at 40 C.F.R. § 122.26(b)(14)(x) or  
10 40 C.F.R. § 122.26(b)(15).

11          aa.      Site-Specific BMP Plan shall mean a plan for controlling pollutants in  
12 storm water discharges from Sites that meets the requirements of the General  
13 Construction Activities Storm Water Permit and Section V of this Consent Decree.

14          bb.      “State” shall refer to the State of Hawai‘i.

15          cc.      “SWPCP” shall mean a Storm Water Pollution Control Plan, a plan for  
16 controlling pollutants in storm water discharges from locations that meets the  
17 requirements of the General Industrial Activities Storm Water Permit and Section V of  
18 this Consent Decree.

19          dd.      “SWMPP” shall mean a Storm Water Management Program Plan  
20 developed and implemented as required by HDOT’s MS4 permit and modified as  
21 required by this Consent Decree.

## 22 **II. COMPLIANCE WITH THE CLEAN WATER ACT**

23          4.       HDOT shall fully comply with all requirements of the Clean Water Act, as well as  
24 with the terms and conditions of all applicable NPDES Permits, including the Highways Division  
25 Oahu District Municipal Separate Storm Sewer System (“MS4”) permit; the Honolulu  
26 International Airport NPDES permit, Permit No. HI0021440; the Hawai‘i General Industrial  
27

1 Activities Storm Water permit, HAR 11-55 Appendix B; and the Hawai'i General Construction  
2 Activities Storm Water permit, HAR 11-55 Appendix C.

### 3 **III. APPROVAL PROCESS**

4 5. Approval of Deliverables. After review of any plan, report, or other item that is  
5 required to be submitted pursuant to this Consent Decree, EPA and DOH shall in writing: (a)  
6 approve the submission; (b) approve the submission upon specified conditions; (c) approve part  
7 of the submission and disapprove the remainder; or (d) disapprove the submission.

8 a. If the submission is approved pursuant to Paragraph 5.(a), HDOT shall  
9 take all actions required by the plan, report, or other document, in accordance with the  
10 schedules and requirements of the plan, report, or other document, as approved. If the  
11 submission is conditionally approved or approved only in part, pursuant to Paragraph  
12 5.(b) or (c), HDOT shall, upon written direction of EPA and DOH, take all actions  
13 required by the approved plan, report, or other item that EPA and DOH determine are  
14 technically severable from any disapproved portions, subject to HDOT's right to dispute  
15 only the specified conditions or the disapproved portions, under Section X of this Decree  
16 (Dispute Resolution).

17 b. If the submission is disapproved in whole or in part pursuant to Paragraph  
18 5.(c) or (d), HDOT shall, within 30 business days or such other time as agreed to in  
19 writing, correct all deficiencies and resubmit the plan, report, or other item, or  
20 disapproved portion thereof, for approval, in accordance with the preceding Paragraphs.  
21 If the resubmission is approved in whole or in part, HDOT shall proceed in accordance  
22 with the preceding Subparagraph.

23 6. Any Stipulated Penalties applicable to the original submission, as provided in  
24 Section VIII of this Decree, shall accrue during the 30-day period or other period specified for  
25 resubmission, but shall not be payable unless the resubmission is untimely or is disapproved in  
26 whole; provided that, if the original submission was so deficient as to constitute a material breach  
27

1 of HDOT's obligations under this Decree, the Stipulated Penalties applicable to the original  
2 submission shall be due and payable notwithstanding any subsequent resubmission.

3 7. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in  
4 whole or in part, EPA and DOH may again require HDOT to correct any deficiencies, in  
5 accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to  
6 HDOT's right to invoke Dispute Resolution and to the right of EPA and DOH to seek Stipulated  
7 Penalties as provided in the preceding Paragraphs.

#### 8 **IV. CERTIFICATION OF REPORTS AND SUBMISSIONS**

9 8. Except as otherwise expressly provided in this Consent Decree, any report or  
10 other document submitted by HDOT pursuant to this Decree that makes any representation  
11 concerning compliance or noncompliance with any requirement of this Decree, the Act or its  
12 implementing regulations, or any applicable permit, shall be certified by a Responsible Officer of  
13 HDOT. The certification shall be in the following form:

14 I certify under penalty of law that I have examined and am familiar with the  
15 information submitted in this document and all attachments and that this  
16 document and its attachments were prepared either by me personally or under my  
17 direction or supervision in a manner designed to ensure that qualified and  
18 knowledgeable personnel properly gather and present the information contained  
19 therein. I further certify, based on my personal knowledge or on my inquiry of  
those individuals immediately responsible for obtaining the information, that the  
information is true, accurate and complete. I am aware that there are significant  
penalties for submitting false information, including the possibility of fines and  
imprisonment for knowingly and willfully submitting a materially false statement.

#### 20 **V. INJUNCTIVE RELIEF**

21 Highways Division Oahu District MS4

22 Compliance with December 2003 SWMPP and Additional Requirements

23 9. Upon entry of this Consent Decree, HDOT shall fully and completely implement  
24 its December 2003 Storm Water Management Program Plan ("SWMPP"). In addition, HDOT  
25 shall also comply with the additional requirements set out below at Paragraphs 9.a - 9.g. For  
26 each of these additional requirements, HDOT shall make and submit the necessary modifications  
27  
28

1 to its SWMPP and implement those modifications upon submittal. HDOT shall make additional  
2 modifications as requested by EPA and DOH, in accordance with Section III (Approval Process).

3 a. Debris Removal Best Management Program

4 (1) Within 60 days of entry of this Consent Decree HDOT shall  
5 modify, and implement accordingly, the Street Sweeping Schedule as set out as  
6 Table II-1 of the December 2003 SWMPP so as to provide for the sweeping of all  
7 state highway segments on Oahu (shoulders and medians) at least as frequently as  
8 set forth in this Paragraph. A list of roadway segments and their respective  
9 minimum sweeping frequencies is set out at Appendix B and incorporated herein  
10 by reference. HDOT may propose revisions to this modified Street Sweeping  
11 schedule when it submits the revised SWMPP in accordance with Paragraph 10.f  
12 below.

13 (2) Within 60 days of entry of this Consent Decree, HDOT shall  
14 modify, and implement accordingly, the Storm Drainage Structure Inspection  
15 Schedule as set out as Table II-2 of the December 2003 SWMPP so as to provide  
16 for the inspection and necessary cleaning, as provided for at Pages DR3-1 and  
17 DR3-2, of all state highway storm drainage system gutters, swales, open channels/  
18 ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other  
19 accessible discharge points that are appurtenant to all state highway segments on  
20 Oahu according to the requirements of this Paragraph. The minimum inspection  
21 and cleaning frequencies required by this Subparagraph are set out at Appendix C  
22 and incorporated herein by reference. HDOT may propose revisions to this  
23 modified Storm Drainage Structure Inspection Schedule when it submits the  
24 revised SWMPP per Paragraph 10.f, below.

25 (3) Within two years of entry of this Consent Decree, HDOT shall  
26 develop and implement a comprehensive asset management system for the Oahu  
27



1 District's storm drain system and related appurtenances, including maintenance  
2 equipment, to ensure appropriate debris removal and system maintenance. The  
3 asset management system shall include justification of its priorities on the basis of  
4 potential impacts to water quality and shall, at a minimum, include identification  
5 of the number and location of all drain inlets and outfalls. HDOT shall use this  
6 asset management system to establish priorities and to schedule and track  
7 appropriate system maintenance and debris removal program activities, such as  
8 street sweeping, catch basin cleaning, and green waste and accumulated soil  
9 removal. The asset management system shall be included in the modified  
10 SWMPP upon its completion.

11 b. Construction Activities BMP Program

12 (1) Within 90 days after entry of this Decree, HDOT shall provide a  
13 copy of the current edition of the City and County of Honolulu's "Best  
14 Management Practices Manual for Construction Sites in Honolulu" ("CCH  
15 Manual"), to all appropriate staff involved in construction, including contractors  
16 and in-house employees (including employees of the Maintenance Section who  
17 are either directly or indirectly involved in the implementation of activities under  
18 either the SWMPP and/or this Consent Decree), those involved in work done  
19 pursuant to encroachment permits, and those involved in erosion control projects.  
20 For the purposes of this Subparagraph, it shall be sufficient for HDOT to provide  
21 to the offices listed in Appendix G, at a minimum, the number of CCH Manuals  
22 specified in Appendix G. Within 90 days after entry of the Consent Decree, any  
23 Contractor (either professional consultant or construction contractor) involved  
24 with construction at HDOT facilities or within State Highways rights-of-way shall  
25 be required to obtain the CCH Manual.  
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1                   (2)     HDOT shall provide annual training on the Construction BMP  
2     Program Plan to all staff with construction storm water responsibilities, including  
3     construction engineers, maintenance staff, and plan reviewers. This training shall  
4     be specific to HDOT activities (including the proper installation and maintenance  
5     of approved BMPs), policies, and procedures. The first annual training shall be  
6     conducted by no later than September 15, 2005 or within 30 days after entry of  
7     this Decree, whichever is later.

8                   (3)     Beginning 30 days after entry of this Decree, HDOT shall not  
9     allow construction to commence on any contract, in-house, or encroachment  
10    permit project unless and until it (a) has verified that the project has received from  
11    DOH a Notice of General Permit Coverage under the Hawai'i General  
12    Construction Activities Storm Water permit (unless the project will disturb less  
13    than one acre of land) and has satisfied any other applicable requirements of the  
14    Hawai'i NPDES permit program, and (b) has reviewed the applicable Site-  
15    Specific BMP Plan to verify that it fully meets all requirements of the following,  
16    to the extent that they are applicable: (i) HDOT's Standard Provisions (Sections  
17    107.17 and 209); (ii) Water Pollution and Erosion Control Notes; (iii) NPDES  
18    Requirements for Permit Projects Within State Highway Right-of-Way Notes; (iv)  
19    the General Construction Activities Storm Water NPDES permit; and (v) any  
20    other applicable requirements of the Hawai'i NPDES permit program. For  
21    encroachment permit projects, HDOT shall only be responsible for the activities  
22    described in Subparagraphs 9.b.(1) and 9.b.(3) above, for work that occurs within  
23    HDOT rights-of-way.

24                  (4)     Within 10 business days after entry of this Decree, HDOT shall  
25    submit for approval a checklist that its reviewers shall use in evaluating the BMP  
26    plans pursuant to this Paragraph. Upon approval, HDOT shall provide copies of  
27  
28

1 this checklist to applicants for encroachment permits and to contractors for their  
2 use in developing construction Site-Specific BMP Plans for HDOT-contracted  
3 construction projects.

4 (5) Upon entry of this Decree, prior to the initiation of ground-  
5 disturbing activities at any Site, except for activities associated with the  
6 installation of BMPs at a Site, no other construction activities may commence  
7 until an HDOT engineer (or an engineer retained by HDOT) or qualified inspector  
8 reviews and becomes familiar with the projects' site-specific BMP plan and  
9 inspects the Site to determine whether the BMPs required by the BMP plan have  
10 been installed correctly and in the correct locations. The engineer or qualified  
11 inspector who conducts this inspection shall document that the BMPs required by  
12 the BMP plan have been installed correctly and in the correct locations prior to the  
13 commencement of any other ground-disturbing activity.

14 c. Chemical Applications BMP Program. Within 60 days after entry of this  
15 Decree, HDOT shall develop and implement a specific training program, for all potential  
16 appliers (bulk and hand-held) of fertilizers, pesticides, and herbicides, in the proper  
17 application of those substances. HDOT shall not permit the application of fertilizers,  
18 pesticides, or herbicides unless the applier has first received this training.

19 d. Erosion Control BMP Program. Within 180 days after entry of this  
20 Decree, HDOT shall submit for approval a plan for the completion of high priority  
21 erosion control projects on all of the sites listed in Appendix D which is incorporated  
22 herein by reference. This plan shall include for each site, at a minimum: the proposed  
23 erosion control methodology to be utilized; construction schedule; cost estimate;  
24 completion criteria; and a schedule for post-completion inspection and maintenance. All  
25 erosion control projects to be done under this Subparagraph shall be completed by no  
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1 later than two years after entry of this Decree. HDOT shall continue to perform  
2 maintenance activities on completed projects as necessary.

3 e. Maintenance Facilities BMP Program

4 (1) Within 90 days after entry of this Decree, HDOT shall develop and  
5 implement, for each maintenance baseyard located on Oahu, a site-specific  
6 SWPCP that includes, among other things, a detailed site plan, site description,  
7 and facility layout, description of potential pollutant sources, site-specific BMPs,  
8 inspection procedures, and spill cleanup procedures. An individual at each facility  
9 (e.g., yard foreman) shall be charged with ensuring implementation of the  
10 SWPCP. This individual shall be trained to conduct inspections and identify areas  
11 for BMP improvement. To ensure consistency and provide assistance and  
12 oversight, HDOT shall identify an individual, also trained to conduct inspections  
13 and identify areas for BMP improvement and independent of any specific  
14 baseyard, who shall conduct inspections of all six baseyards at least quarterly.

15 (2) HDOT shall develop and implement a formal storm water  
16 awareness training program for Oahu District Maintenance supervisors and staff  
17 that identifies potential sources of pollution, general BMPs that can be used to  
18 reduce or eliminate such sources, and specific BMPs for the District's facilities  
19 and activities. The training shall incorporate elements of the public education  
20 campaign being implemented by the City and County of Honolulu and shall  
21 educate staff that they serve a role in protecting water quality. Maintenance  
22 supervisors and staff shall be made aware of the NPDES permit, the overall  
23 SWMPP, the SWPCP for their baseyard, and the applicable BMPPP(s). HDOT  
24 shall conduct the first round of this training by no later than September 15, 2005  
25 or within 30 days after entry of this Decree, whichever is later.

26 f. New Development and Significant Redevelopment BMP Program Plan

1                   (1)     Within 90 days of the commencement of services by the Master  
2     Consultant, or within 180 days of entry of this Decree, whichever comes first,  
3     HDOT shall develop and implement specific criteria establishing when permanent  
4     post-construction BMPs must be included in project design to address storm water  
5     impacts and pollutants of concern. These criteria shall take into consideration,  
6     among other things, potential water quality impacts anticipated from the  
7     permanent post-construction conditions. Permanent post-construction BMPs to be  
8     considered shall include those designed to treat storm water runoff and other  
9     structural type devices.

10                  (2)     Upon approval of the criteria established under Paragraph 9.f.(1),  
11     above, HDOT shall not advertise any construction project or award any  
12     construction contract unless and until the project design has been reviewed to  
13     ensure that appropriate permanent post-construction BMPs have been included in  
14     the project design and are included in the bid package. No project shall proceed  
15     without the inclusion of appropriate permanent post-construction BMPs unless  
16     there is specific documentation demonstrating that such post-construction BMPs  
17     are not practicable. For the purposes of this Paragraph and for a period not to  
18     exceed 60 days after approval of the criteria, matters concerning the timing or  
19     scheduling of a project may be considered as a reason that post-construction  
20     BMPs are not practical for inclusion in the project design. Project documents for  
21     projects that will include installation of permanent post-construction BMPs shall  
22     also include appropriate requirements for their future continued maintenance.

23                  (3)     Upon approval of the criteria established under Paragraph 9.f.(1),  
24     HDOT shall not issue any encroachment, discharge, or connection permit for any  
25     project that requires NPDES permit coverage under the General Construction  
26     Activities Storm Water Permit unless and until the project design has been  
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1 reviewed to ensure that appropriate permanent post-construction BMPs have been  
2 included in the project design and are included in the permit application package.  
3 No encroachment, discharge, or connection permit shall be issued without the  
4 inclusion of appropriate permanent post-construction BMPs unless there is  
5 specific documentation demonstrating that such post-construction BMPs are not  
6 practicable. Permit documents for applications that will include installation of  
7 permanent post-construction BMPs shall also include appropriate requirements for  
8 their future continued maintenance.

9 g. Illicit Connection / Illegal Discharge Elimination Program

10 (1) HDOT shall complete follow-up investigations on all industrial,  
11 commercial, and high-density residential parcels discharging to HDOT's MS4 that  
12 are indicated in the December 2000 Storm Water Questionnaire Survey of Parcels  
13 Adjacent to Highway Rights-of-Way ("Questionnaire Survey"). Follow-up  
14 investigations shall be ranked as follows: parcels identified in the Questionnaire  
15 Survey as priorities 1-4 shall be considered as Tier 1 parcels; parcels identified as  
16 priorities 5-16 shall be considered as Tier 2 parcels; and parcels identified as  
17 priorities 17-30 shall be considered as Tier 3 parcels. Each such investigation  
18 shall be deemed completed upon either (a) the issuance of a discharge or  
19 connection permit, or (b) sufficient documentation to support a conclusion that no  
20 discharge or connection permit is necessary because (i) there is no physical  
21 connection present, or (ii) the only potential discharges from non-industrial  
22 activities are by overland sheet flow. Tier 1 investigations shall be completed  
23 within 18 months after entry of this Decree. All Tier 2 and Tier 3 investigations  
24 shall be completed within 3 years after entry of this Decree.

25 (2) Within 60 days after entry of this Decree, HDOT shall transmit to  
26 DOH full electronic and paper copies of its survey parcel database, sorted by SIC  
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code. HDOT shall provide electronic and paper updates to this list, reflecting outcomes of the investigations discussed above, on an annual basis in its Annual Report.

#### SWMPP Revisions

10. HDOT shall revise and submit for approval its Oahu District Storm Water Management Program Plan ("SWMPP") to incorporate the requirements set out at Paragraphs 9.a - 9.g, above, and at Paragraphs 10.a - 10.k, below. Unless specified otherwise, HDOT shall submit the revised SWMPP within 240 days of the commencement of services by the Master Consultant, or within one year of entry of this Decree, whichever comes first. Upon its submittal, HDOT shall fully and completely implement all parts of the revised SWMPP, which shall supersede the December 2003 SWMPP. HDOT shall make additional modifications as requested by EPA and DOH, in accordance with Section III (Approval Process).

a. Storm Water Management Program Structure. HDOT shall revise its SWMPP to include a formal storm water management program structure for the Oahu District MS4 program that includes, at a minimum, designated storm water contacts for each Highways Division branch, program, and field office, as appropriate. An organization chart to reflect this structure shall also be developed and submitted. For each designated contact, HDOT shall include a description of the position's roles and responsibilities for the storm water program. HDOT shall hold monthly meetings with these contacts to discuss implementation and evaluation of the storm water program. HDOT shall maintain copies of the sign-in sheets for these meetings in accordance with Paragraph 52, below, and these shall be made available to EPA and DOH upon request.

b. Measurable Goals. HDOT shall revise its SWMPP to include a combination of both direct and indirect objective, quantitative standards ("measurable goals") that can be used to measure progress under each specific program element in its SWMPP. In its SWMPP, HDOT shall incorporate the specific measurable goals

1 identified in other parts of this Consent Decree in addition to developing other  
2 appropriate measurable goals.

3 c. Training and Education

4 (1) HDOT shall revise its SWMPP to establish a training program  
5 such that all HDOT staff and management involved in storm water management  
6 activities shall receive at least annual storm water training in the requirements of  
7 each program element for which they have responsibility. This training program  
8 shall include, at a minimum, for each program element: (a) identification and  
9 qualifications of the trainers; (b) training in, at a minimum for each program  
10 element, the following topic areas: review of applicable measurable goals; the  
11 selection and implementation of appropriate BMPs; and review of storm water  
12 regulations, permits, and the terms of this Consent Decree; and (c) appropriate  
13 documentation of training activities.

14 (2) To the extent that HDOT utilizes contractors, with the exception of  
15 general contractors used to construct contract construction projects, to implement  
16 any SWMPP activities, HDOT shall require that such contractors receive training  
17 equivalent to that included in HDOT's training program in all applicable areas.

18 (3) No less than annually, HDOT shall offer appropriate storm water  
19 runoff management training to general contractors and subcontractors used to  
20 construct HDOT's contract construction projects. Such training shall emphasize  
21 sediment and erosion control requirements and BMPs (Chapter 2 in the CCH  
22 manual), but shall additionally cover, in appropriate detail, requirements and  
23 BMPs for all of the other Contractor Activities covered in Chapter 1 of the CCH  
24 Manual.

25 (4) Prior to the issuance of any Notice to Proceed, or the equivalent, to  
26 any contractor on any contract construction project, HDOT shall hold a  
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1 preconstruction meeting with the project's prime contractor during which the  
2 requirements of the General Construction Activities Storm Water Permit shall be  
3 discussed, as well as (a) Standard Provisions (Sections 107.17 and 209); (b)  
4 "Water Pollution and Erosion Control Notes"; and (c) the applicable requirements  
5 of this Consent Decree.

6 d. Monitoring of Program Effectiveness. HDOT shall revise its SWMPP to  
7 include a discussion of specific activities to be undertaken in order to assess BMP  
8 effectiveness, including an evaluation of success in achieving measurable goals and a  
9 discussion of available and applicable water quality monitoring data. Assessments of  
10 program effectiveness shall be conducted at least annually and be reported in HDOT's  
11 End-of-Year Reports.

12 e. Reporting. HDOT shall revise its SWMPP to include a description of  
13 reporting procedures and activities, including schedules and proposed content of semi-  
14 annual and annual reports such that, at a minimum, the following is reported for each  
15 storm water program element (BMP Program) in each Mid-Year and End-of-Year Report:

16 (1) Requirements: description of what HDOT was required to do  
17 (permit requirements, EPA or DOH orders for compliance, or other commitments  
18 set forth in the SWMPP and this Consent Decree);

19 (2) Past Year Activities: description of activities over the reporting  
20 period including, where applicable, progress accomplished toward meeting  
21 specific measurable goals or other specific performance requirements and  
22 including, when requirements were not fully met, a detailed explanation as to why  
23 HDOT did not meet its commitments for the reporting period;

24 (3) Future Activities: description of planned activities including,  
25 where applicable, specific activities to be undertaken during the next reporting  
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1 period toward accomplishing specific measurable goals or other specific  
2 performance requirements;

3 (4) Resources: report on the status of HDOT's resource base for  
4 implementing both this Consent Decree and HDOT's NPDES permit during the  
5 applicable reporting period, together with an estimate of the resources over and  
6 above those required in the current reporting period that will be required in the  
7 next reporting period.

8 f. Debris Removal Best Management Practices Program. HDOT shall revise  
9 its SWMPP to develop procedures and a schedule for inspections of:

10 (1) all state highways on Oahu for the purpose of identifying whether  
11 sweeping or brooming of roadways, shoulders, or medians is needed, and

12 (2) all state highway storm drainage system catch basins, gutters and  
13 open ditches, trenches, and storm drains on Oahu for the purpose of identifying  
14 whether cleaning of such structures is needed.

15 In both cases identified in the preceding Subparagraphs, the need for sweeping, brooming, or  
16 structure cleaning shall, in addition to other criteria, be determined based upon material  
17 accumulation rates and potential threat of discharges to waters of the United States that may have  
18 an effect on water quality. The schedule shall provide that each highway mile and storm  
19 drainage feature is inspected at least once annually, but that highway segment drainages and their  
20 associated storm features that are located in High Priority Watersheds shall be inspected at least  
21 semiannually. The adopted procedures shall also provide for the identification of other highway  
22 segments (in addition to those located in High Priority Watersheds) and their associated storm  
23 drainage features that may require more frequent sweeping, brooming, or structure cleaning  
24 based upon material accumulation rates and potential threat of discharges to waters of the United  
25 States that may have an effect on water quality. The procedures shall establish debris  
26 accumulation thresholds above which sweeping, brooming, or structure cleaning must occur.

1 g. Construction Activities BMP Program.

2 (1) HDOT shall revise the following documents to require use of the  
3 CCH Manual and the City and County of Honolulu's "Rules for Soil Erosion  
4 Standards and Guidelines," April 1999: (a) Standard Provisions (Sections 107.17  
5 and 209); (b) "Water Pollution and Erosion Control Notes"; and (c) "NPDES  
6 Requirements for Permit Projects Within State Highway Right-of-Way Notes."  
7 These revised documents shall be used, to the extent applicable, on all contract,  
8 in-house, and encroachment permit construction projects on Oahu. HDOT shall  
9 incorporate these revised documents, either explicitly or by reference, into its  
10 revised SWMPP.

11 (2) HDOT shall revise its SWMPP to specify mandatory minimum  
12 project inspection and enforcement requirements for use at all construction sites  
13 as follows:

14 (a) In addition to inspections required by the Hawai'i General  
15 Construction Activities Storm Water permit, and as otherwise required  
16 under the Hawai'i NPDES permit program, all in-house and contract  
17 construction projects shall be inspected at least monthly by a qualified  
18 construction inspector who is independent (i.e., not involved in the  
19 projects' day-to-day planning, design, or implementation) of the  
20 construction projects to be inspected. HDOT may use more than one  
21 qualified construction inspector for these inspections. HDOT, in  
22 consultation with DOH, shall develop and implement a standard  
23 inspection form, and reporting procedures for use in these inspections.  
24 The inspection form shall include, at a minimum, a checklist for the proper  
25 installation of BMPs specified in the BMP plan, and the reporting  
26 procedures shall include, at a minimum, notification of critical deficiencies  
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1 to the Director of HDOT and DOH. Upon three successive monthly  
2 inspections that indicate, in total, no critical or major deficiencies or less  
3 than six minor deficiencies with no more than three minor deficiencies in  
4 one month in a project's BMPs or other storm water management  
5 activities, HDOT may decrease the inspection frequency for such project  
6 to quarterly. However, if while under a quarterly inspection frequency, an  
7 inspection of a project conducted pursuant to this Paragraph indicates at  
8 least one critical or major deficiency or a total of three or more minor  
9 deficiencies in the project's BMPs or other storm water management  
10 activities, the inspection frequency shall immediately return to no less than  
11 monthly. HDOT shall further develop and implement written procedures  
12 for appropriate corrective actions and follow-up inspections when an  
13 inspected project is not in full compliance with this Consent Decree, the  
14 HDOT MS4 permit, the Hawai'i General Construction Activities Storm  
15 Water permit, or any other applicable requirements under the Hawai'i  
16 NPDES permit program. The corrective action procedures shall at a  
17 minimum require that (i) any critical deficiencies shall be corrected or  
18 addressed before the close of business on the day of the inspection at  
19 which the deficiency is identified, and (ii) any major deficiencies shall be  
20 corrected or addressed as soon as possible, but in no event later than five  
21 business days after the inspection at which the deficiency is identified or  
22 before the next forecasted precipitation, whichever is sooner.

23 (b) All encroachment permit construction projects shall be  
24 inspected at least once during the life of the project, and any project of the  
25 types listed immediately below shall be inspected at least annually if it  
26 continues longer than one year's duration:  
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- 1) Housing/commercial development improvements which include large roadway and utility improvements or any grading within HDOT's rights-of-way;
- 2) Utility main installation (waterlines, sewerlines, underground electrical lines, etc.);
- 3) Landscape/irrigation installation (e.g. median beautification projects); and
- 4) Drainline connections.

All inspections shall be conducted by a qualified construction inspector. HDOT may use more than one qualified construction inspector for these inspections. HDOT, in consultation with DOH, shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP plan, and the reporting procedures shall include, at a minimum, notification of any critical deficiencies to the Director of HDOT and DOH. HDOT shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with this Consent Decree, the HDOT MS4 permit, or the Hawai'i General Construction Activities Storm Water permit.

h. Erosion Control Best Management Practices Program. HDOT shall revise its SWMPP as follows:

- (1) HDOT shall include water quality impacts as a priority in selecting projects for erosion control improvements, ensuring that erosional areas with the potential for significant water quality impact, but with limited public safety concerns, are also considered a high priority for remediation. Erosional areas with the potential for significant water quality impact shall include areas where there is evidence of rilling or gullyng or other evidence of significant sediment transport

1 and that are located within High Priority Watersheds. HDOT shall identify and  
2 implement erosion control projects based on water quality concerns while  
3 continuing to address high profile public safety projects.

4 (2) HDOT shall require the prompt implementation of temporary  
5 erosion control measures (e.g., erosion control blankets or fabrics, gravel bags,  
6 and silt fence/fiber rolls) on the erosional areas with the potential for significant  
7 water quality impact identified in the preceding Subparagraph if a permanent  
8 solution is not immediately possible.

9 (3) HDOT shall modify the list of approved erosion and sediment  
10 control BMPs to include, at a minimum, at least all of those contained in the CCH  
11 Manual. The revised SWMPP shall also provide for the implementation of  
12 alternative erosion and sediment control BMPs where appropriate.

13 (4) HDOT shall undertake a program to evaluate the erosional  
14 potential of storm drain system outlets that discharge downslope of the roadbed.  
15 Where discharge points are observed to be creating erosional conditions, HDOT's  
16 program shall require installation of velocity dissipaters or other BMPs to reduce  
17 the risk of continued erosion at these locations.

18 i. Maintenance Facilities BMP Program. HDOT shall develop and  
19 implement a written set of maintenance BMPs for routine and emergency in-house  
20 activities. Activity-specific BMPs shall be organized as a manual and be created in a  
21 format that facilitates its use by field staff. It shall be distributed to all field staff and  
22 shall complement the overall goals of the BMPPP.

23 j. New Development and Significant Redevelopment BMP Program Plan.  
24 HDOT shall revise its SWMPP to add the following additional permanent post-  
25 construction BMPs to the current list in Section 3 of the New Development and  
26 Significant Redevelopment BMP Program Plan (Section VIII M of the December 2003  
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1 SWMPP); infiltration basins, infiltration trenches, media filters, Continuous Deflective  
2 Separation (CDS) units, and similar technologies.

3 k. Illicit Connection / Illegal Discharge Elimination Program. HDOT shall  
4 revise its SWMPP as follows:

5 (1) HDOT shall develop procedures for identifying and responding to  
6 possibly illicit connections and illegal discharges. These procedures shall include,  
7 but not be limited to, specific time deadlines for responding to identified  
8 discharges. Such identification and response procedures shall be coordinated with  
9 the inspection procedures required under the revised Debris Removal Best  
10 Management Practices Program set forth in Paragraph 10.f, above.

11 (2) HDOT shall develop a program to conduct inspections of industrial  
12 and commercial holders of connection and discharge permits to its MS4. This  
13 industrial/commercial inspection program shall include scheduling inspections  
14 such that each industrial facility is inspected at least once every five years. Any  
15 industrial facility that does not have NPDES permit coverage under the Hawai'i  
16 NPDES permit program shall be reported to DOH no later than 30 days after the  
17 inspection date. Commercial dischargers are to be ranked according to relative  
18 risk of discharge of contaminated runoff to HDOT's MS4. The highly ranked  
19 commercial facilities shall be inspected at least once every 5 years. This  
20 industrial/commercial inspection program shall be updated as appropriate to  
21 reflect the outcomes of the investigations discussed in the preceding  
22 Subparagraph.

23 11. Highways Division Construction Activities on Other Islands. On a statewide  
24 basis HDOT shall implement all of the revised construction program activities requirements  
25 pursuant to Paragraphs 9.b, 10.g.(1), and 10.g.(2)(a), above, and all of the revised New  
26 Development and Significant Redevelopment project activities requirements pursuant to  
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Paragraphs 9.f and 10.j, above, on all HDOT construction projects (including contract and in-house projects) that are subject to NPDES storm water permit requirements, except that references in Paragraph 10.g.(1) to the CCH "Rules for Soil Erosion Standards and Guidelines" (April 1999) shall be modified to require use and adoption of each county's comparable and applicable standards. The time deadlines contained in the referenced Paragraphs shall apply on the Other Islands under this Paragraph.

#### Airports Division

#### Airport Tenant Inspections and Enforcement

12. Within 90 days after entry of this Decree, HDOT shall submit to EPA and DOH a written program of procedures for airport tenant inspection and enforcement that shall be used at Honolulu International, Lihue, and Kahului airports, in accordance with the requirements of this Paragraph. HDOT shall implement the procedures upon their submission to and approval by EPA and DOH. HDOT shall make modifications as requested EPA and DOH, in accordance with the requirements of Section III (Approval Process). This tenant inspection and enforcement program shall provide, at a minimum, for the following:

a. HDOT shall develop procedures and schedules for inspections of all airport tenants, including all those located away from the airports proper (e.g., on Aolele and Ualena Streets in Honolulu). At each airport, HDOT shall rank each tenant for its relative potential either to contribute pollutants to storm water runoff or to have a non-storm water discharge either into the airport storm sewer system or otherwise into waters of the United States. Rankings shall be made on a low/medium/high threat basis. Tenants that have separate NPDES permit coverage shall always be ranked as high threat. At least once each calendar year, HDOT shall review its tenant lists and these rankings and update them as necessary. This updated list shall be submitted as part of HDOT's Annual Report.

b. HDOT shall inspect each tenant/facility in each ranking class as follows:



1 (1) High ranked tenants, other than those that have separate NPDES  
2 permit coverage, shall be inspected at least quarterly.

3 (2) High ranked tenants that have separate NPDES permit coverage  
4 shall be inspected at least annually. HDOT shall submit a copy of each report of  
5 these inspections to DOH within 30 days of the date of the inspection.

6 (3) Medium ranked tenants shall be inspected at least annually.

7 (4) Low ranked tenants shall be inspected at least biennially.

8 (5) HDOT shall inspect each of its airport maintenance baseyards at  
9 least quarterly. HDOT shall submit a copy of each report of these inspections to  
10 DOH within 30 days of the date of the inspection.

11 c. Procedures for inspection of airport tenants and maintenance yards shall  
12 require a written record of the inspection such as either a checklist or form. At a  
13 minimum, such checklist or form shall for each inspection identify: facility name,  
14 address, contact name, contact telephone number, and SIC code; inspection date;  
15 inspector name; BMPs evaluated; inspection findings; and recommended follow-up  
16 actions. Copies of all inspection reports shall be maintained for a minimum of 5 years  
17 and shall be made available to EPA or DOH upon request.

18 d. Procedures for enforcement against tenants with inadequate BMPs or non-  
19 storm water discharges shall include identification of a range of enforcement responses  
20 available to HDOT, clear guidelines for selection of an enforcement response appropriate  
21 to the tenant deficiency at issue, guidelines for escalating the initial enforcement response  
22 for multiple or repeated violations, and follow-up inspections to ensure the problems have  
23 been corrected.

24 e. HDOT shall develop procedures for training of HDOT and contract  
25 management staff charged with implementing or overseeing airport tenant inspection and  
26 enforcement activities.

1           13.     Resources. HDOT shall take all actions to ensure that it has adequate resources,  
2 including contracting resources, to comply with all requirements of both this Consent Decree and  
3 its NPDES permits. Such actions shall include, but not be limited to, accurately assessing  
4 resource needs, communicating these needs to the Director of HDOT, making timely budget  
5 requests of the legislature, and notifying the legislature of the terms and requirements of this  
6 Consent Decree and HDOT's NPDES permits. The human resources necessary to carry out the  
7 requirements of this Consent Decree and HDOT's NPDES permits may be comprised of either  
8 HDOT employees or contractors or both.

9           14.     Reporting. For the first year after entry of this Consent Decree, HDOT shall  
10 submit quarterly reports to EPA and DOH that shall include the following information for the  
11 past quarter. The first quarterly report shall be due 60 days after the end of the first complete  
12 quarter following entry of this Consent Decree. All other reports shall be submitted no later than  
13 45 days after the last day of each calendar quarter. After submittal of the fourth quarterly report  
14 referenced above HDOT shall, for the duration of this Decree, submit semiannual reports.  
15 Semiannual reports shall be due on August 31<sup>st</sup> and February 28<sup>th</sup> and shall cover the six month  
16 periods ending on June 30<sup>th</sup> and December 31<sup>st</sup>, respectively. HDOT may submit separate  
17 quarterly and semiannual reports for the Airports and Highways Divisions. All reports shall, at a  
18 minimum, include the following information:

19           a.     Oahu District MS4 Activities

20               (1)     Storm Water Contact Coordination Meetings

21                 The number, dates, and names of attendees of each monthly Storm  
22                 Water Contact Coordination meetings;

23               (2)     Debris Removal Program Activities

24                 (a)     Specific highway segments (with dates) inspected for  
25                 sweeping needs;

26                 (b)     Specific highway segments swept, frequency of sweeping,  
27                 and the total amount of debris removed;

28                 (c)     Specific (by Milepost or other identifier) storm drainage  
                  system catch basins, gutters and open ditches, trenches, and sewers  
                  inspected, by specific highway segment and date;

                  (d)     Specific (by Milepost or other identifier) storm drainage  
                  system catch basins, gutters and open ditches, trenches, and sewers  
                  cleaned, the date(s) of cleaning, and the nature and total amount of debris  
                  removed;

(e) Number and dates of debris removal program trainings, types of trainings, and attendees participating in each; and

(f) Activities undertaken toward development and utilization of the asset management system;

(3) Construction Program Activities

(a) Total number of contract projects in the planning or design stages and total number of projects for which permanent post-construction BMP review was completed;

(b) Total number of contract project contracts put out to bid, total number awarded, total number of contract project NPDES permit verifications and BMP plans reviewed, and total number of pre-construction BMP verification inspections;

(c) Total number of in-house project NPDES permit verifications and BMP plans reviewed and total number of pre-construction BMP verification inspections;

(d) Total number of active construction projects and the total number of storm water inspections, specifying project type (contract, in-house, permit); and

(e) Number and dates of construction program trainings, types of trainings, and attendees participating in each;

(4) Chemical Applications Program Activities

Number and dates of chemical applications program trainings, types of trainings, and attendees participating in each;

(5) Erosion Control Program Activities

(a) Number of erosional problem areas with a potential for significant water quality impact identified, the number stabilized (permanently or temporarily) or otherwise remediated, and a revised schedule for stabilizing or otherwise remediating the remaining areas; and

(b) Number and dates of erosion control program trainings, types of trainings, and attendees participating in each;

(6) Maintenance Facility Program Activities

(a) Dates and locations and a summary of findings of maintenance facility oversight inspections; and

(b) Number and dates of maintenance facility trainings, types of trainings, and attendees participating in each;

(7) New Development and Significant Redevelopment Program Activities

(a) Number of project designs reviewed for appropriate inclusion of permanent post-construction BMPs; and

(b) Number and dates of New Development and Significant Redevelopment Program Activities trainings, types of trainings, and attendees participating in each;

(8) Illicit Connection / Illegal Discharge Elimination Program Activities

(a) Total number of completed follow-up investigations of discharging industrial, commercial, and high-density residential parcels;

(b) Total number of inspections of industrial and commercial dischargers to HDOT's right-of-way; and

(c) Number and dates of IC/ID Program Activities trainings, types of trainings, and attendees participating in each;

b. Statewide Highway Construction Activities

1 (1) Total number of contract projects in the planning or design stages  
2 and total number of projects for which permanent post-construction BMP review  
was completed;

3 (2) Total number of contract project contracts put out to bid, total  
4 number awarded, total number of contract project NPDES permit verifications  
and BMP plans reviewed, and total number of pre-construction BMP verification  
inspections;

5 (3) Total number of in-house project NPDES permit verifications and  
BMP plans reviewed and total number of pre-construction BMP verification  
inspections;

6 (4) Total number of active construction projects and the total number  
of storm water inspections, specifying project type (contract and in-house); and

7 (5) Number and dates of construction program trainings, types of  
trainings, and attendees participating in each;

8 c. Airports Division

9 (1) A listing of each tenant, its relative pollutant risk ranking, date(s)  
10 on which it was inspected by HDOT, and types of enforcement response actions  
taken against any tenant, including dates and any required follow-up activities;  
and

11 (2) Number and dates of tenant inspection and enforcement program  
12 trainings, types of trainings, and attendees participating in each.

13 15. Responsibility for Acts of Contractors or Agents. HDOT shall be responsible for  
14 ensuring that work is performed in accordance with the requirements of this Decree, even if that  
15 work is performed by contractors, subcontractors, or agents. HDOT shall provide a copy of this  
16 Decree to all Managers, employees, contractors, subcontractors, and agents whose duties might  
17 reasonably include compliance with any provision of this Decree, as well as to any contractor  
18 specifically retained to perform work required under this Decree. Defendant shall condition any  
19 such contract upon performance of the work in conformity with the terms of this the Decree. In  
20 any action to enforce this Consent Decree, HDOT shall not raise as a defense the failure by any  
21 of its Managers, employees, agents, contractors, or subcontractors to take any actions necessary  
22 to comply with the provisions of this Decree.

23 **VI. CIVIL PENALTY**

24 16. Civil Penalty. Within 30 days after entry of this Consent Decree, HDOT shall pay  
25 a civil penalty of \$1,000,000.00, plus interest from the date the penalty is due. Interest shall be  
26 calculated in accordance with 28 U.S.C. § 1961. Interest shall continue to accrue until payment  
27 is made. The Civil Penalty payment shall be allocated with \$600,000, plus accrued interest, if

1 any, being paid to the United States and \$400,000, plus accrued interest, if any, being paid to  
2 DOH.

3 17. Method of Payment.

4 a. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to  
5 the U.S. Department of Justice in accordance with instructions to be provided to HDOT,  
6 following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S.  
7 Attorney’s Office for the District of Hawai’i. At the time of payment, HDOT shall  
8 simultaneously send written notice of payment and a copy of any transmittal  
9 documentation (which should reference DOJ case number 90-5-1-1-07488 and the civil  
10 action number of this case) to the United States in accordance with Section XIV  
11 (Notification).

12 b. Payment shall be made by cashier’s or certified check made payable to the  
13 State of Hawai’i. At the time of payment, Defendant shall simultaneously send written  
14 notice of payment and a copy of any transmittal documentation (which should reference  
15 the civil action number of this case) to the Parties in accordance with Section XIV  
16 (Notification).

17 **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

18 18. HDOT shall implement a Supplemental Environmental Project (“SEP”),  
19 consisting of an Audit and Environmental Management System (“EMS”)(“the EMS SEP”), to be  
20 performed in accordance with the provisions of Appendix E to this Consent Decree, which is  
21 attached hereto and incorporated into this Decree by reference. In implementing the SEP, HDOT  
22 shall spend not less than \$1,062,500 in Eligible SEP costs. Eligible SEP costs include the costs  
23 of planning and implementing the SEP, but do not include any costs associated with corrective  
24 actions needed for compliance actions identified under the EMS.

25 19. HDOT shall implement a SEP consisting of “Erosion and Sediment Control for  
26 Highways” Compliance Assistance Workshops for contractors of professional services and for  
27

1 contractors of construction services on the islands of Hawai'i (in Hilo and Kona), Kauai, Maui,  
2 and Oahu (in Honolulu and Kapolei)("the Compliance Assistance Workshops SEP"). These  
3 Compliance Assistance Workshops shall be developed and implemented in accordance with the  
4 provisions of Appendix F to the Consent Decree which is attached hereto and incorporated into  
5 this Decree by reference. In implementing the SEP, HDOT shall spend not less than \$60,000 in  
6 Eligible SEP costs. Eligible SEP costs are limited to the costs to perform the tasks described in  
7 Appendix F, and do not include any costs associated with developing the workshop curriculum.

8 20. With regard to each SEP, HDOT certifies the truth and accuracy of each of the  
9 following:

10 a. that, as of the date of executing this Decree, HDOT is not required to  
11 perform or develop the SEP by any federal, state, or local law or regulation and is not  
12 required to perform or develop the SEP by agreement, grant, or as injunctive relief  
13 awarded in any other action in any forum;

14 b. that the SEP is not a project that HDOT was planning or intending to  
15 construct, perform, or implement other than in settlement of the claims resolved in this  
16 Decree;

17 c. that HDOT has not received, and is not negotiating to receive, credit for  
18 the SEP in any other enforcement action; and

19 d. that HDOT will not receive any reimbursement for any portion of the SEP  
20 from any other person.

21 21. EMS SEP Completion Report. Within 30 days after HDOT concludes that the  
22 EMS SEP has been fully implemented in accordance with the requirements of this Decree,  
23 HDOT shall submit to the Parties in accordance with Section XIV of this Consent Decree  
24 (Notification) a SEP Completion Report. The SEP Completion Report shall contain the  
25 following information:

26 a. A detailed description of the SEP as implemented;  
27  
28

b. A description of any problems encountered in completing the SEP and the solutions thereto;

c. An itemized list of all Eligible SEP costs and acceptable evidence of such costs; and

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and Appendix E.

22. EPA may, in its sole discretion, require information in addition to that contained in Defendants' initial SEP Completion Report, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

23. After receiving the SEP Completion Report, the United States (after consultation with DOH) shall notify HDOT whether or not it has satisfactorily completed the EMS SEP. If the SEP has not been satisfactorily completed in accordance with this Decree and Appendix E, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 18, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

24. Compliance Assistance Workshops SEP Completion Report. Within 30 days after HDOT concludes the final Compliance Assistance Workshop, HDOT shall submit to the Parties in accordance with Section XIV of this Consent Decree (Notification) a SEP Completion Report. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. An itemized list of all Eligible SEP costs and acceptable evidence of such costs; and

c. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and Appendix F.

25. DOH may, in its sole discretion, require information in addition to that contained in Defendants' initial SEP Completion Report, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

26. After receiving the SEP Completion Report, the DOH (after consultation with United States) shall notify HDOT whether or not it has satisfactorily completed the Compliance Assistance Workshops SEP. If the SEP has not been satisfactorily completed in accordance with this Decree and Appendix F, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 19, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

27. Disputes concerning the satisfactory performance of each SEP may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

28. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 8, above.

29. Any public statement, oral or written, in print, film, or other media, made by HDOT making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States and State of Hawai‘i v. Hawai‘i Department of Transportation, taken on behalf of the U.S. Environmental Protection Agency and the Hawai‘i Department of Health under the Clean Water Act.”

## VIII. STIPULATED PENALTIES

30. Stipulated Penalty Amounts. If HDOT fails to comply fully and timely with the requirements of this Decree, including the compliance dates for each and every measure set forth in Section V (Injunctive Relief) and Section VII (Supplemental Environmental Projects), and with all requirements set forth in any applicable permits, HDOT shall pay Stipulated Penalties in the following amounts:

a. for each failure to submit a Notice of Intent or otherwise obtain a permit, failure to prepare a Site-Specific BMP Plan, or failure to have the Site-Specific BMP Plan available at a construction site: \$1,000 per day per violation;



- 1           b.       for each failure in developing a SWPCP for any location in accordance  
2 with applicable permits and guidance documents: \$800 per violation;
- 3           c.       for failure to install a BMP specified by the Site-Specific BMP Plan or  
4 permit: \$2,000 per day per violation;
- 5           d.       for each failure to properly install or maintain appropriate BMPs in  
6 accordance with applicable plans, permits, and guidance documents: \$1,500 per day per  
7 violation;
- 8           e.       for failure to conduct the inspections required by Paragraphs 9.a.(2),  
9 9.b.(5), 9.e.(1), 10.f, 10.g.(2), 10.k.(2), 11, and 12 above: \$1,000 for each of the first ten  
10 violations; \$2,500 for each of the next ten violations; and \$5,000 for each subsequent  
11 violation;
- 12           f.       for failure to provide reports required pursuant to Paragraphs 10.e and 14:  
13 \$500 per day for the first ten days of each violation; \$1,000 per day for the next ten days  
14 of each violation; and \$2,500 per day for each subsequent day of violation;
- 15           g.       for each failure to timely submit or re-submit plans for approval in  
16 accordance with Section III (Approval Process): \$500 for each day of violation;
- 17           h.       for each failure to conduct or document the training required by  
18 Paragraphs 9.b.(2), 9.c, 9.e, 10.c, 11, and 12.e above: \$1,000;
- 19           i.       for failure to pay the civil penalty or accrued interest: \$1,000 for each day  
20 that the payment is late;
- 21           j.       for failure to timely submit the documents required by the SEP pursuant to  
22 Section VII of this Decree and Appendix E: \$500 per day per violation;
- 23           k.       for failure to timely submit a draft workshop outline as described in  
24 Appendix F: \$500 per day;
- 25           l.       for each failure to offer a workshop: \$5,000; and  
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m. for each failure to timely submit the documents required by the SEP pursuant to Section VII of this Decree and Appendix F: \$500 per day per violation.

31. EMS SEP Compliance: If HDOT's total Eligible SEP Costs are less than \$1,062,500 in connection with the performance of the EMS SEP described in Appendix E to this Consent Decree, or if the SEP has not been satisfactorily completed, HDOT shall be liable for stipulated penalties as set forth below. If HDOT has halted or abandoned the completion of the SEP, such penalties shall accrue from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

a. If the SEP has been satisfactorily completed but HDOT's total Eligible SEP Costs are less than \$1,062,500, HDOT shall pay stipulated penalties at the rate of 100% for every one dollar that HDOT's total Eligible SEP Costs are less than \$1,062,500.

b. If the SEP has not been satisfactorily completed, HDOT shall pay stipulated penalties at the rate of 150% for every one dollar that HDOT's total Eligible SEP Costs are less than \$1,062,500. If the SEP has not been satisfactorily completed but HDOT's total Eligible SEP Costs for the SEP are equal to or exceed \$1,062,500, HDOT shall not be liable for any stipulated penalties for the SEP if HDOT has made good faith and timely efforts to complete the SEP and certifies with supporting documentation, no later than the date that HDOT is required to submit a SEP Completion Report, that it has spent at least \$1,062,500 in Eligible SEP Costs. If HDOT does not provide the certification and the documentation required by this Subparagraph, or if the documentation provided does not support HDOT's certification, HDOT shall be deemed to be in violation of this Consent Decree and shall pay stipulated penalties of \$25,000.

32. Compliance Assistance Workshops SEP Compliance: If HDOT's total Eligible SEP Costs are less than \$60,000 in connection with the performance of the Compliance Assistance Workshops SEP described in Appendix F to this Consent Decree, or if the SEP has

not been satisfactorily completed, HDOT shall be liable for stipulated penalties as set forth below. If HDOT has halted or abandoned the completion of the SEP, such penalties shall accrue from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

a. If the SEP has been satisfactorily completed but HDOT's total Eligible SEP Costs are less than \$60,000, HDOT shall pay stipulated penalties at the rate of 100% for every one dollar that HDOT's total Eligible SEP Costs are less than \$60,000.

b. If the SEP has not been satisfactorily completed, HDOT shall pay stipulated penalties at the rate of 150% for every one dollar that HDOT's total Eligible SEP Costs are less than \$60,000. If the SEP has not been satisfactorily completed but HDOT's total Eligible SEP Costs for the SEP are equal to or exceed \$60,000, HDOT shall not be liable for any stipulated penalties for the SEP if HDOT has made good faith and timely efforts to complete the SEP and certifies with supporting documentation, no later than the date that HDOT is required to submit a SEP Completion Report, that it has spent at least \$60,000 in Eligible SEP Costs. If HDOT does not provide the certification and the documentation required by this Subparagraph, or if the documentation provided does not support HDOT's certification, HDOT shall be deemed to be in violation of this Consent Decree and shall pay stipulated penalties of \$25,000.

33. Accrual of Stipulated Penalties. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Penalties shall accrue regardless of whether HDOT has been notified of a violation but need not be paid until a demand is made. HDOT shall pay any Stipulated Penalty within 30 days of receiving written demand therefor.

34. Demand. The United States or DOH, or both, may seek Stipulated Penalties under this Section. Where both sovereigns seek Stipulated Penalties for the same violation of

1 this Consent Decree, HDOT shall pay 60% of total Stipulated Penalties to the United States and  
2 40% to DOH. Where only one sovereign demands Stipulated Penalties for a violation, it shall  
3 make that demand on its own behalf, and HDOT shall pay the full amount of the Stipulated  
4 Penalties due for the violation to that sovereign.

5 35. Waiver of Stipulated Penalties. The United States or DOH may, in the  
6 unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due that  
7 sovereign under this Consent Decree. The determination by one sovereign not to seek Stipulated  
8 Penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other  
9 sovereign from seeking Stipulated Penalties.

10 36. Payment. HDOT shall, as directed by the United States in its demand, pay  
11 Stipulated Penalties owing to the United States by EFT in accordance with Section VI (Civil  
12 Penalty), Paragraph 17.a, above, or by certified or cashier's check in the amount due, payable to  
13 the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07488 and United States  
14 Attorney's Office file number [REDACTED], and delivered to the office of the United States  
15 Attorney, District of Hawai'i, Room 6-100, PJKK Federal Building, 300 Ala Moana Boulevard,  
16 Honolulu, Hawai'i 96850. Any payment of Stipulated Penalties shall be accompanied by a  
17 transmittal memorandum referencing DOJ No. 90-5-1-1-07488 and United States Attorney's  
18 Office file number [REDACTED] and stating that payment of Stipulated Penalties is being  
19 made. HDOT shall pay any Stipulated Penalties owing to DOH according to the provisions of  
20 Section VI (Civil Penalty), Paragraph 17.b.

21 37. Interest. If HDOT fails to pay Stipulated Penalties according to the terms of this  
22 Consent Decree, HDOT shall be liable for interest on such penalties, as provided for in 28 U.S.C.  
23 § 1961, accruing as of the date payment became due.

24 38. No Effect on Obligation to Comply. The payment of Stipulated Penalties shall  
25 not alter in any way HDOT's obligation to comply with the requirements of this Decree.

1           39.   No Waiver of Other Remedies. Subject to the provisions of Section XII of this  
2 Consent Decree (Effect of Settlement), the Stipulated Penalties provided for in this Consent  
3 Decree shall be in addition to any other rights, remedies, or sanctions available to the United  
4 States and DOH for HDOT's violation of this Consent Decree or applicable law. Where a  
5 violation of this Consent Decree is also a violation of the Clean Water Act, HDOT shall be  
6 allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for  
7 such violation.

8           40.   Effect of Dispute Resolution. Stipulated Penalties shall continue to accrue during  
9 any dispute resolution period, but need not be paid until the following:

10           a.    If the dispute is resolved by agreement or by a decision of EPA that is not  
11 appealed to this Court, HDOT shall pay accrued Stipulated Penalties, if any, determined  
12 to be owing to the United States and DOH within 15 business days of the agreement or  
13 the receipt of EPA's decision or order;

14           b.    If the dispute is appealed to the Court and the United States and DOH  
15 prevail in whole or in part, HDOT shall pay all accrued Stipulated Penalties determined  
16 by the Court to be owed to the United States and DOH within 30 days of receipt of the  
17 Court's decision or order, except as provided in Subparagraph c, below;

18           c.    If the District Court's decision is appealed by HDOT or by the United  
19 States and DOH, HDOT shall pay all accrued Stipulated Penalties determined by the  
20 District Court to be owing to the United States and DOH into an interest-bearing escrow  
21 account within 30 days of receipt of the Court's decision or order. Stipulated Penalties  
22 shall be paid into this account as they continue to accrue, at least every 30 days. Within  
23 15 business days of receipt of the final appellate court decision, the escrow agent shall  
24 pay the balance of the account to the United States and DOH, or to HDOT, in accordance  
25 with the court's mandate.

26 **IX.   FORCE MAJEURE**  
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1           41.     Definition of Force Majeure. A "Force Majeure" event is any event beyond the  
2 control of HDOT, its contractors, or any entity controlled by HDOT that delays the performance  
3 of any obligation under this Consent Decree despite HDOT's best efforts to fulfill the obligation.  
4 "Best efforts" includes anticipating any potential Force Majeure event and addressing the effects  
5 of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any  
6 resulting delay to the greatest extent possible. In no case shall any of the following circum-  
7 stances give rise to a claim of Force Majeure: unanticipated or increased costs or expenses  
8 associated with implementation of this Decree or changed financial circumstances; failure to  
9 apply for a required permit or approval, or to provide in a timely manner all information required  
10 to obtain a permit or approval, that is necessary to meet the requirements of this Decree; failure  
11 by HDOT to approve contracts; failure by HDOT to secure federal funding; or failure by HDOT  
12 to fill all staffing positions.

13           42.     Required Notification. HDOT shall notify EPA and DOH orally or by electronic  
14 or facsimile transmission as soon as possible, but not later than 72 hours after the time HDOT  
15 first knew of, or in the exercise of reasonable diligence under the circumstances should have  
16 known of, any event that might delay completion of any requirement of this Decree, whether or  
17 not the event is a Force Majeure event. HDOT shall make the oral notification to the United  
18 States required by this Paragraph by calling Kathi Moore, the Chief of the Clean Water  
19 Compliance Office; in the event that HDOT is unable to reach Kathi Moore, such notification  
20 may be effective if HDOT leaves a detailed message explaining that notice is being provided  
21 pursuant to this Paragraph. HDOT shall make oral notification to DOH by calling Denis Lau, the  
22 Chief of the Clean Water Branch. The United States and DOH may designate alternative  
23 representatives to receive oral notification at their discretion by sending HDOT a written  
24 designation in accordance with Section XIV (Notification). Within 7 days of providing oral  
25 notice, HDOT shall provide written notice by facsimile with hard copy to follow to EPA and  
26 DOH. The written notice HDOT submits pursuant to this Paragraph shall indicate whether  
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1 HDOT claims that the delay should be excused due to a Force Majeure event. The written notice  
2 shall describe in detail the basis for HDOT's contention that it has experienced, or may  
3 experience, a Force Majeure delay (if it intends to make such a claim); the anticipated length of  
4 the delay; the precise cause or causes of the delay; and the measures taken or to be taken to  
5 prevent or minimize the delay and the timetable by which those measures will be implemented.  
6 Failure to comply with the procedures of this Paragraph shall preclude HDOT from asserting any  
7 claim of Force Majeure.

8 43. Procedures for Extension. If the United States agrees that a Force Majeure event  
9 has occurred or will occur, the United States may agree to extend the time for HDOT to perform  
10 the affected requirements for the time necessary to complete those obligations. An extension of  
11 time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the  
12 time to perform any other obligation. Where the United States agrees to an extension of time, the  
13 appropriate modification shall be made pursuant to Section XV of this Consent Decree  
14 (Modification).

15 44. Dispute Resolution. If the United States does not agree that a Force Majeure  
16 event has occurred, or does not agree to the extension of time sought by HDOT, the United  
17 States' position shall be binding, unless HDOT invokes Dispute Resolution under Section X of  
18 this Consent Decree. In any such dispute, HDOT bears the burden of proving, by a prepon-  
19 derance of the evidence, that each claimed Force Majeure event is a Force Majeure event; that  
20 HDOT gave the notice required by Paragraph 42, above; that the Force Majeure event caused any  
21 delay HDOT claims was attributable to that event; and that HDOT exercised best efforts to  
22 prevent or minimize any delay caused by the event.

23 **X. DISPUTE RESOLUTION**

24 45. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the  
25 dispute resolution procedures of this Section shall be the exclusive mechanism to resolve  
26 disputes between HDOT and the United States and DOH arising under this Decree. However,  
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1 the procedures set forth in this Section shall not apply to actions by the United States or DOH to  
2 enforce obligations of HDOT that have not been disputed in accordance with this Section. The  
3 procedures set forth in this Section shall not apply to disputes between DOH and the United  
4 States.

5 46. Informal Dispute Resolution. Any dispute subject to dispute resolution under this  
6 Consent Decree shall first be the subject of informal negotiations. The dispute shall be  
7 considered to have arisen when HDOT sends the United States and DOH a written Notice of  
8 Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal  
9 negotiations shall not exceed 20 days from the date the dispute arises, unless that period is  
10 modified by written agreement of the United States, DOH, and HDOT. If the Parties cannot  
11 resolve a dispute by informal negotiations, then the position advanced by the United States (after  
12 consultation with DOH) shall be considered binding unless, within 30 days after the conclusion  
13 of the informal negotiation period, HDOT invokes formal dispute resolution procedures set forth  
14 in Paragraph 47, below.

15 47. Formal Dispute Resolution.

16 a. Within 30 days after the conclusion of the informal negotiation period,  
17 HDOT may invoke formal dispute resolution procedures by serving on the United States  
18 and DOH a written Statement of Position regarding the matter in dispute. The Statement  
19 of Position shall include, but may not be limited to, any factual data, analysis, or opinion  
20 supporting HDOT's position and any supporting documentation relied upon by HDOT.

21 b. The United States and DOH shall serve their Joint Statement of Position  
22 within 45 days of receipt of HDOT's Statement of Position. The Joint Statement of  
23 Position shall include, but may not be limited to, any factual data, analysis, or opinion  
24 supporting that position and any supporting documentation relied upon by the United  
25 States. The Joint Statement of Position shall be binding on HDOT, unless HDOT files a  
26 motion for judicial review of the dispute in accordance with Paragraph 48, below.  
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1       48.   Petitions to the Court. In the event that the Parties cannot resolve a dispute by  
2 informal or formal negotiations as set forth above, the following procedures shall apply:

3           a.       HDOT may seek judicial review of the dispute by filing with the Court and  
4 serving on the United States and DOH a Motion requesting judicial resolution of the  
5 dispute. The Motion shall be filed within 30 days of receipt of the Joint Statement of  
6 Position set forth in Paragraph 47.b, above.

7           b.       The Motion shall attach all Statements of Position and shall contain a  
8 written statement of HDOT's position on the matter in dispute, including any supporting  
9 factual data, analysis, opinion, and documentation, and shall set forth the relief requested  
10 and any schedule within which the dispute must be resolved for orderly implementation  
11 of the Consent Decree. HDOT shall serve such Motion on the United States and DOH  
12 electronically and by overnight delivery.

13          c.       The United States and DOH shall respond to HDOT's Motion within 30  
14 days of the service of the Motion. The United States and DOH agree to serve their Joint  
15 Response electronically and by overnight delivery.

16          d.       HDOT may file a reply memorandum within 15 business days of service  
17 of the Joint Response.

18          e.       Standard and Scope of Review. In any dispute brought under this  
19 Paragraph, HDOT shall bear the burden of demonstrating that its position clearly  
20 complies with the Clean Water Act and the Act's implementing regulations and that  
21 Defendant is entitled to relief under applicable law. The United States reserves the right  
22 to argue that its position is reviewable only on the administrative record and must be  
23 upheld unless arbitrary and capricious or otherwise not in accordance with law.

24       49.   Effect on Other Obligations. The invocation of dispute resolution procedures  
25 under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of  
26 HDOT under this Consent Decree, unless and until final resolution of the dispute so provides.  
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1 Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day  
2 of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in  
3 Paragraph 40, above. If HDOT does not prevail on the disputed issue, Stipulated Penalties shall  
4 be assessed and paid as provided in Section VIII (Stipulated Penalties).

5 **XI. INFORMATION COLLECTION AND RETENTION**

6 50. The United States, DOH, and their representatives, including attorneys,  
7 contractors, and consultants, shall have the right of entry into any facility covered by this Consent  
8 Decree, at all reasonable times, upon presentation of credentials, to:

- 9 a. monitor the progress of activities required under this Consent Decree;
- 10 b. verify any data or information submitted to the United States or DOH in  
11 accordance with the terms of this Consent Decree;
- 12 c. obtain samples and, upon request, splits of any samples taken by HDOT or  
13 its representatives, contractors, or consultants;
- 14 d. obtain documentary evidence, including photographs and similar data; and
- 15 e. assess HDOT's compliance with this Consent Decree.

16 51. Upon request, HDOT shall provide EPA and DOH, or their authorized  
17 representatives, splits of any samples taken by HDOT. Upon request, EPA and DOH shall  
18 provide HDOT splits of any samples taken by EPA or DOH.

19 52. Until five years after the termination of this Consent Decree, HDOT shall retain,  
20 and shall instruct its contractors and agents to preserve, all non-identical copies of all documents,  
21 records, or other information (including documents, records, or other information in electronic  
22 form) in its or its contractors' or agents' possession or control, or that come into its or its  
23 contractors' or agents' possession or control, and that relates in any manner to HDOT's perfor-  
24 mance of its obligations under this Consent Decree. This information-retention requirement shall  
25 apply regardless of any contrary institutional policies or procedures. At any time during this  
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1 information-retention period, the United States or DOH may request copies of any documents,  
2 records, or other information required to be maintained under this Paragraph.

3 53. At the conclusion of the information-retention period provided in the preceding  
4 Paragraph, HDOT shall notify the United States and DOH at least 90 days prior to the destruction  
5 of any documents, records, or other information subject to the requirements of the preceding  
6 Paragraph and, upon request by the United States or DOH, HDOT shall deliver any such  
7 documents, records, or other information to EPA or DOH. HDOT may assert that certain  
8 documents, records, or other information is privileged under the attorney-client privilege or any  
9 other privilege recognized by federal law. If HDOT asserts such a privilege, it shall provide the  
10 following: (a) the title of the document, record, or information; (b) the date of the document,  
11 record, or information; (c) the name and title of each author of the document, record, or  
12 information; (d) the name and title of each addressee and recipient; (e) a description of the  
13 subject of the document, record, or information; and (f) the privilege asserted by HDOT.  
14 However, no documents, records, or other information created or generated pursuant to the  
15 requirements of this Consent Decree shall be withheld on grounds of privilege.

16 54. HDOT may also assert that information required to be provided under this Section  
17 is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any  
18 information that HDOT seeks to protect as CBI, HDOT shall follow the procedures set forth in  
19 40 C.F.R. Part 2.

20 55. This Consent Decree in no way limits or affects any right of entry and inspection,  
21 or any right to obtain information, held by the United States or DOH pursuant to applicable  
22 federal or State laws, regulations, or permits, nor does it limit or affect any duty or obligation of  
23 HDOT to maintain documents, records, or other information imposed by applicable federal or  
24 State laws, regulations, or permits.

## 25 **XII. EFFECT OF SETTLEMENT**

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28

56. This Consent Decree resolves the civil claims of the United States and DOH for the violations alleged in the Complaint filed in this action through the date of lodging.

57. The United States and DOH reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 56. This Consent Decree shall not be construed to limit the rights of the United States or DOH to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 56.

58. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. HDOT is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and HDOT's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States and DOH do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that HDOT's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act or its implementing regulations or with any other provisions of federal, State, or local laws, regulations, or permits. Notwithstanding the United States' or DOH's review and approval of any data, reports, or plans submitted pursuant to this Decree, HDOT shall remain solely responsible for compliance with this Decree.

59. This Consent Decree does not limit or affect the rights of HDOT or of the United States or DOH against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against HDOT, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

### XIII. MISCELLANEOUS

61. Headings. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

62. Costs of Suit. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and DOH shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by HDOT.

#### **XIV. NOTIFICATION**

63. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be thereafter designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ #90-5-1-1-07488

and

Kathi Moore (WTR -7)  
Chief, CWA Compliance Office  
U.S. EPA, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105  
(415) 972-3505

As to EPA:

Kathi Moore (WTR -7)  
Chief, CWA Compliance Office  
U.S. EPA, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105  
(415) 972-3505

1 As to DOH:

2 Denis Lau  
3 Chief, Clean Water Branch  
4 Hawai'i State Department of Health  
5 919 Ala Moana Blvd., Room 301  
6 Honolulu, Hawai'i 96814  
7 (808) 586-4309

8 and

9 Kathleen S. Ho  
10 Deputy Attorney General  
11 Health and Human Services Division  
12 Department of the Attorney General  
13 State of Hawai'i  
14 465 South King Street, Room 200  
15 Honolulu, Hawai'i 96813  
16 (808) 587-3062

17 As to HDOT:

18 Rodney K. Haraga  
19 Director, Department of Transportation  
20 869 Punchbowl Street  
21 Honolulu, Hawai'i 96813  
22 (808) 587-2150

23 and

24 Jeffery S. Kato  
25 Deputy Attorney General  
26 Land and Transportation Division  
27 Department of the Attorney General  
28 State of Hawai'i  
465 South King Street, Room 300  
Honolulu, Hawai'i 96813  
(808) 587-2994

64. Notifications to or communications with HDOT, DOH, EPA, or the United States shall be deemed submitted:

a. when required to be sent by mail, on the date they are postmarked and sent by certified mail, return receipt requested;

b. when required to be sent by overnight delivery, on the date they are picked up by the overnight delivery service; or

c. when required to be made electronically, on the date they are sent by electronic mail with confirmation of receipt.

## XV. MODIFICATION AND TERMINATION

65. Modification. The deadlines set forth in Sections V (Injunctive Relief) and VII (Supplemental Environmental Project) of this Decree may be modified, and those and other non-material modifications of this Decree shall be made by written agreement of the parties, with notification to the Court. Where any modification constitutes a material change to any term of this Decree, it shall be effective only upon written agreement of the Parties and approval by the Court.

66. Request to Terminate Decree. No sooner than 5 years after entry of this Decree, HDOT may request the United States and DOH's consent to termination of this Decree. In seeking such consent, HDOT shall provide a written report to the United States and DOH that demonstrates:

a. HDOT has paid all civil penalties, Stipulated Penalties, and interest due under this Decree;

b. There are no unresolved matters subject to Dispute Resolution pursuant to Section X (Dispute Resolution);

c. No enforcement action under this Decree is pending;

d. HDOT has fully and successfully completed the compliance requirements set forth in Section V (Injunctive Relief); and

e. HDOT has fully and successfully completed all SEP requirements set forth in Section VII.

67. Response to Request for Termination

a. If the United States and DOH agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

b. If the United States and DOH do not agree that the Decree may be terminated, HDOT may invoke Dispute Resolution under Section X of this Decree. However, HDOT shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 47 of Section X, until 60 days after service of its Request for Termination.

## XVI. INTEGRATION

68. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

## XVII. APPENDICES

69. The following appendices are attached to and incorporated into this Consent Decree:

**“Appendix A” is the Definition of High Priority Watersheds;**

**“Appendix B” is the Highway Segments and Sweeping Frequencies**

**“Appendix C” is the Drainage System Inspection and Cleaning Schedule**

**“Appendix D” is the High Priority Areas for Erosion Control Measures**

“Appendix E” is the EMS SEP

“Appendix F” is the Compliance Assistance Workshops SEP

“Appendix G” is the list of DOT Facilities with CCH Manuals



1 **XVIII. ENTRY AND FINAL JUDGMENT**

2 70. Authority to Sign Decree. The undersigned representatives of HDOT certify that  
3 they are authorized to enter into and to execute this Decree and to legally bind HDOT to the  
4 terms and conditions of the Decree and that they meet the requirements for authorized signatory  
5 found in 40 C.F.R. § 122.22. The undersigned representatives of DOH and the United States  
6 each certifies that he or she is authorized to enter into and to execute this Decree and to legally  
7 bind the Party that he or she represents to the terms and conditions of the Decree.

8 71. Counterparts. This Consent Decree may be signed in counterparts, and its validity  
9 shall not be challenged on that basis.

10 72. Designation of Agent for Service. HDOT shall identify on the attached signature  
11 page the name and address of an agent who is authorized to accept service of process by mail on  
12 HDOT's behalf with respect to all matters arising under or relating to this Decree. HDOT agrees  
13 to accept service in that manner and to waive the formal service requirements of Fed. R. Civ. P. 4  
14 and 5 and any applicable local rules of this Court, including, but not limited to, service of  
15 summons.

16 73. Public Notice. This Consent Decree shall be lodged with the Court for a period of  
17 not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The  
18 United States reserves the right to withdraw or withhold its consent if the comments regarding  
19 the Consent Decree disclose facts or considerations indicating that the Consent Decree is  
20 inappropriate, improper, or inadequate. HDOT agrees not to oppose entry of this Consent Decree  
21 by the Court or to challenge any provision of the Decree, unless the United States has notified  
22 HDOT in writing that it no longer supports entry of the Decree.

23 74. Final Judgment. Upon approval and entry of this Consent Decree by the Court,  
24 this Consent Decree shall constitute a final judgment of the Court as to the United States, DOH,  
25 and HDOT. The Court finds that there is no just reason for delay and therefore enters this  
26 judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

75. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XV, or effectuating or enforcing compliance with the terms of this Decree.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

UNITED STATES DISTRICT JUDGE

1 We hereby consent to entry of the foregoing Consent Decree, subject to the Notice and Comment  
2 Provisions of 28 C.F.R. § 50.7 and Paragraph 73 of this Decree:

3  
4 FOR THE UNITED STATES OF AMERICA

5  
6 Date: 9/27/05

KELLY A. JOHNSON  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

7  
8  
9  
10 Date: 9/27/05

ANGELA O'CONNELL  
CYNTHIA HUBER  
Senior Attorneys  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-5273

1 We hereby consent to entry of the foregoing Consent Decree, subject to the Notice and Comment  
2 Provisions of 28 C.F.R. § 50.7 and Paragraph 73 of this Decree:

3  
4 Date: 28 SEP 05

GRANTA Y/NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building, 2241-A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

9  
10 Date: 14 SEP 05

WAYNE NASTRI  
Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

14 OF COUNSEL:

15 LAURIE KERMISH  
16 Assistant Regional Counsel  
17 U.S. EPA, Region 9  
18 75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3917

FOR THE HAWAII DEPARTMENT OF  
HEALTH

Date: AUG 15 2005

Chiyome/Leinaka Fukino, M.D.  
Director of Health  
State of Hawai'i  
1250 Punchbowl Street  
Honolulu, Hawai'i 96813

APPROVED AS TO FORM:

Kathleen S. Ho  
Deputy Attorney General

FOR DEFENDANT, HAWAII DEPARTMENT  
OF TRANSPORTATION

Date: SEP - 1 2005

Rodney K. Naraga  
Director, Department of Transportation  
869 Punchbowl Street  
Honolulu, Hawaii 96813

APPROVED AS TO FORM:

Jeffery S. Kato  
Deputy Attorney General

# Exhibit “F”

National Pollutant Discharge Elimination  
System Permit issued by the  
Department of Health (“NPDES Permit”)

PERMIT NO. HI S000001

**AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et. seq.*; the "Act"); Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules, Department of Health (DOH), State of Hawaii, Chapters 11-54 and 11-55;

**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION  
(PERMITTEE)**

is authorized to discharge storm water runoff and certain non-storm water discharges as identified in Part B.2 of this permit from the Department of Transportation (DOT), Highways Division's (DOT-HWYS) Municipal Separate Storm Sewer System (MS4), and additional storm sewer outfalls that may be identified from time to time by the Permittee,

into State Waters in and around the Island of Oahu,


in accordance with the general requirements, discharge monitoring requirements, and other conditions set forth herein, and in the attached DOH "Standard NPDES Permit Conditions," dated December 30, 2005.

All references to Title 40 of the Code of Federal Regulations (CFR) are to regulations that are in effect on July 1, 2004, except as otherwise specified. Unless otherwise specified herein, all terms are defined as provided in the applicable regulations in Title 40 of the CFR.

This permit will become effective on **March 31, 2006**.

This permit and the authorization to discharge will expire at midnight,  
**September 8, 2009**.

Signed this 28<sup>th</sup> day of February, 2006.

  
(for) Director of Health

**Final Permit  
February 28, 2006**



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ATTACHMENT: STANDARD NPDES PERMIT CONDITIONS (Updated as of December 30, 2005). In case of conflict between the conditions stated in this permit and those specified in the Standard NPDES Permit Conditions, the more stringent conditions shall apply.

**A. GENERAL REQUIREMENTS**

The Permittee shall:

1. Comply with all materials submitted in and with the reapplication, dated December 2003, and received by DOT letter, dated December 22, 2003.
2. Retain a copy of this permit and all other related materials and the Storm Water Management Program Plan (SWMPP), with all subsequent revisions, at the DOT-HWYS, Oahu District office.
3. Ensure that anyone working under this permit complies with the terms and conditions of this permit.
4. Include the permit number, **HI S000001**, and the following certification with all information required under this permit:

**"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."**

5. Submit all information required under this permit to the following addresses:
  - a. Director of Health  
Clean Water Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378
  - b. Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
Attention: WTR-7; NPDES/DMR  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**B. DISCHARGE LIMITATIONS**

1. The Permittee shall effectively prohibit non-storm water discharges through its separate storm sewer system into State Waters. NPDES permitted discharges and non-storm water discharges identified in Part B.2 of this permit are exempt from this prohibition.
2. The following non-storm water discharges may be discharged into the Permittee's separate storm sewer system without an NPDES permit provided that the Permittee determines that such discharges will not contain pollutants in amounts that will cause or contribute to a violation of an applicable water quality standard and the SWMPP shall "identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge."
  - a. Water line flushing;
  - b. Landscape irrigation;
  - c. Diverted stream flows;
  - d. Rising ground waters;
  - e. Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
  - f. Uncontaminated pumped ground water;
  - g. Discharges from potable water sources and foundation drains;
  - h. Air conditioning condensate;
  - i. Irrigation water;
  - j. Springs;
  - k. Water from crawl space pumps and footing drains;
  - l. Lawn watering runoff;
  - m. Water from individual residential car washing;
  - n. Water from charity car washes;
  - o. Flows from riparian habitats and wetlands;
  - p. Dechlorinated swimming pool discharges;
  - q. Exterior building wash water (water only);
  - r. Residual street wash water (water only), including wash water from sidewalks, plazas, and driveways, but excluding parking lots; and
  - s. Discharges or flows from fire fighting activities.

The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittee) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency,

**PART B**  
**PERMIT NO. HI S000001**  
**PAGE 5 of 30**

proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee shall document in the storm water management program any local controls or conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the MS4.

3. The discharge of pollutants from the Permittee's MS4 shall be reduced to the Maximum Extent Practicable (MEP).

**C. RECEIVING WATER LIMITATIONS**

1. The discharge shall comply with the basic water quality criteria which states:

“All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

  - (1) Materials that will settle to form objectionable sludge or bottom deposits;
  - (2) Floating debris, oil, grease, scum, or other floating materials;
  - (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in receiving waters;
  - (4) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
  - (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
  - (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.”
2. The discharge shall not cause or contribute to a violation of any of the applicable beneficial uses or water quality objectives contained in Hawaii Administrative Rules (HAR), Chapter 11-54, titled “Water Quality Standards.”
3. The Permittee shall timely inspect the receiving state waters, effluent, and control measures and Best Management Practices (BMPs) to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in HAR, Section 11-54-4. (e.g., the Permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
4. The Permittee shall immediately take action to stop, reduce, or modify the discharge of pollutants as needed to stop or prevent a violation of the basic water quality criteria as specified in HAR, Section 11-54-4.

**D. STORM WATER MANAGEMENT PROGRAM PLAN (SWMPP)**

The Permittee shall:

1. Develop, implement, and enforce a Storm Water Management Program Plan (SWMPP) designed to address the requirements of this permit and limit, to the MEP, the discharge of pollutants to and from its MS4 to protect water quality and to satisfy the appropriate water quality requirements of the Act. The SWMPP shall include the following information for each of the SWMPP components described in Part D.1.a - g below:
  - The BMPs, plus underlying rationale, that shall be implemented for each of the program components.
  - The measurable standards and milestones for each of the BMPs, plus underlying rationale, including interim measures to aid in determining level of effort and effectiveness of each program component.
  - The name or position title and affiliation of the person or persons responsible for implementation or coordination of each program component.
  - Monitoring to determine effectiveness of Wasteload Allocation (WLA) controls and of the overall storm water program.

Submittal Date. The SWMPP shall be updated and modified per the requirements of this permit and shall be submitted to DOH and EPA within one (1) year from the effective date of this permit, or as otherwise specified, and shall fully implement the SWMPP upon submittal to DOH and EPA. The Permittee shall continue to implement the existing SWMPP until submittal of the revision. The SWMPP and any of its revisions, additions, or modifications are enforceable components of this permit.

a. Public Education and Outreach

Within one (1) year of the effective date of this permit, the Permittee shall develop, submit, and implement a comprehensive education and involvement program that shall address the components in Parts D.1.a – D.1.g and shall include specific information on who will receive the training, the topics to be addressed (including a pesticides, herbicides, and fertilizer use program), training methods, and a schedule for training all required staff. The Permittee may fulfill portions of this requirement by cooperating with the City and County of Honolulu's (City) storm water public education program.

- (1) *Targeted Groups.* The Permittee shall address the following targeted groups in the public education plan, and shall describe outreach activities and anticipated frequencies that each activity will be conducted over the permit term:
- DOT-HWYS employees
  - DOT-HWYS consultants
  - Industrial facilities covered by the NPDES permit program
  - Construction industry
  - Any other source that the Permittee determines may contribute a significant pollutant load to its MS4
- (2) *General Public.* The Permittee shall include in the public education plan the following activities, with anticipated frequencies that each activity will be conducted over the permit term:
- Public Service Announcements (PSAs)
  - Adopt-A-Stream Program
  - School programs
  - Distribution of brochures
  - Participation in special events (e.g., Clean-A-Reef) and exhibits
  - Web site
  - Pesticides, herbicides, and fertilizer use program
- (3) *Annual Survey.* The Permittee shall evaluate the progress of the public education program by conducting an annual survey of Oahu residents to measure both behavior and knowledge relating to storm water. The results of the survey, with a comparison to past surveys (i.e., December 2000 Storm Water Questionnaire Survey of Parcels Adjacent to Highway Rights-of-Way), as applicable, shall be summarized in the End-of-Year Report.

b. **Public Involvement/Participation**

The Permittee shall include the public in developing, reviewing, and implementing the SWMPP. The draft SWMPP shall be made available to the public on the DOT-HWYS Website and at local offices. An informational meeting shall be scheduled and announced prior to finalizing the SWMPP to solicit comments and answer questions from the public. Other activities to involve the public might include organizing a citizen advisory group to solicit ongoing input from the public about changes to the SWMPP and specific

SWMP-related projects, or organizing water quality-focused clean-up events to educate the public about storm water impacts from highways.

c. Illicit Discharge Detection and Elimination

(1) Illicit Connection / Illegal Discharge Elimination Program Plan

- (a) *Identification of Illicit Connections and/or Illegal Discharges* - The Permittee shall revise its SWMP to develop procedures for the identification of and response to possible illicit connections and illegal discharges. These procedures shall include, but not be limited to, specific time deadlines for responding to identified discharges.
- (b) *Licenses for private drain connections*. The Permittee shall continue to require licenses for private drain connections and maintain a database of all licensed connections to its MS4.
- (c) *Field Screening*. The Permittee shall develop a written plan for observing major and minor outfalls to screen for improper discharges. The plan shall designate priority areas for screening, specify the frequency for screening, and identify the procedures to be followed if a discharge is observed. The field screening plan shall be submitted to DOH within one (1) year of the effective date of this permit.
- (d) *Investigate complaints*. The Permittee shall promptly investigate observed, suspected, or reported illicit flows and pursue enforcement actions, as appropriate. To assist in this effort, within one (1) year of the effective date of this permit, the Permittee shall:
  - (i) Develop a database to identify improper discharge activity by Tax Map Key (TMK). The database shall include information about each suspected improper discharge, the Permittee's investigation of that discharge, follow-up activities, and the resolution of each discharge;
  - (ii) Implement a program to facilitate public reporting of illicit discharges (i.e., environmental hotline and/or website for reporting); and
  - (iii) Develop and implement a response plan to be consistent with the requirements in this permit.



**PART D**  
**PERMIT NO. HI S000001**  
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- (e) *Enforcement.* The Permittee shall ensure compliance with local ordinances and pursue enforcement actions against property owners with illegal drain connections and persons illegally discharging pollutants to its MS4.
- (f) *Prevent and Respond to Spills to the DOT-HWYS MS4.* The Permittee shall develop a program to prevent, respond to, contain, and clean up all wastewater and other spills that may enter into their MS4 from any source (including private laterals and failing cesspools). This program shall be included in the SWMPP within one (1) year of the effective date of this permit. Spill response teams, which may consist of local, state, and/or federal agencies, shall prevent entry of spills into the DOT-HWYS MS4 and contamination of surface water, ground water, and soil to the MEP.

The Permittee shall coordinate spill prevention, containment, and response activities throughout all appropriate departments, programs, and agencies to ensure maximum water quality protection at all times.

The Permittee shall develop and implement a procedure whereby DOH is notified of all wastewater spills or overflows from private laterals and failing septic systems into their MS4. The Permittee shall prevent, respond to, contain, and clean up wastewater from any such notification.

- (g) *Facilitate Disposal of Used Oil and Toxic Materials.* The Permittee shall implement or continue to implement a program(s) to facilitate the proper management and disposal or recycling of used oil, vehicle fluids, toxic materials, and other household hazardous wastes. Such a program shall include educational activities, public information activities, and identification of collection sites or methods. The program(s) shall be implemented within one (1) year of the effective date of the permit.
- (h) *Tracking* - The Permittee shall maintain a database of illicit connections, illegal discharges, and spills that tracks the type of discharge, responsible party, DOT-HWYS response, and resolution of the discharge to the MS4.
- (i) *Training* - The Permittee shall develop and provide training within one (1) year of the effective date of this permit, and annually

**Final Permit**  
**February 28, 2006**

**PART D**  
**PERMIT NO. HI S000001**  
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thereafter, to staff on identifying and eliminating illicit connections, illegal discharges, and spills to the MS4. This training shall be specific to DOT-HWYS activities, policies, and procedures.

d. Construction Site Runoff Control

(1) *Plan Review and Approval* - The Permittee shall:

- (a) Not allow construction to commence on any contract, in-house, or encroachment (3<sup>rd</sup> party) permit project unless and until it has verified that the project has received from DOH a Notice of General Permit Coverage (NGPC) under HAR, Chapter 11-55, Appendix C, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Construction Activity (General Construction Activity Storm Water permit) (unless the project will disturb less than one (1) acre of land) and satisfied any other applicable requirements of the NPDES permit program (i.e., an individual NPDES permit);
- (b) Ensure that, prior to issuing a connection or discharge permit requiring coverage under the General Construction Activity Storm Water permit and/or any other applicable requirements of the NPDES permit program, the project operator has provided proof of filing a Notice of Intent (NOI) or NPDES application for permit coverage and that a Construction BMPs Plan has been prepared; and
- (c) Review the applicable Site-Specific BMP Plan to verify that it fully meets all requirements of DOT-HWYS' Standard Specifications and/or Special Provisions (SSPs), the General Construction Activity Storm Water permit, and any other requirements under the NPDES permit program, as applicable.

Within 180 days of the effective date of this permit, the Permittee shall develop and submit for approval a checklist that its reviewers shall use in evaluating the BMP Plans pursuant to this paragraph. Copies of this checklist shall be provided to applicants for encroachment permits and to contractors for their use in developing construction SWPPPs for DOT-HWYS-contracted construction projects.

- (2) *Standard Specifications and/or Special Provision Revision* - The Permittee shall revise its SSPs to require use of the current edition of the City's "Best Management Practices Manual for Construction Sites in Honolulu,"

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(City BMP Manual) and the City's "Rules for Soil Erosion Standards and Guidelines," on all contract, in-house, and permit construction projects in Oahu. The Permittee shall incorporate these revised SSPs, either explicitly or by reference, into its revised SWMPP.

- (3) *Construction Site BMPs* - The Permittee shall revise the listing and description of Construction Activity BMPs in its SWMPP to include, at a minimum, the BMPs as contained and described in the City BMP Manual.
- (4) *Construction BMP Field Manual* - Within 180 days of the effective date of the permit, the Permittee shall develop and submit for approval a Construction BMPs field manual describing various construction storm water BMPs installation and maintenance procedures, including, at a minimum, all BMPs listed in the Construction BMP Program Plan component of the December 2003 SWMPP. The DOT-HWYS shall continue to use the existing field checklist during the development of the Construction BMPs field manual. After submittal, the DOT-HWYS shall implement the Construction BMPs field manual. After approval, a copy of this Construction BMPs field manual shall be provided to all DOT-HWYS field staff involved in construction and/or erosion control projects (contract, in-house [i.e., Maintenance Division] and/or encroachment permit).
- (5) *Training* - The Permittee shall provide annual training on the Construction BMPs Program Plan to all DOT-HWYS staff with construction storm water responsibilities, including construction engineers, maintenance staff, and plan reviewers. This training shall be specific to DOT-HWYS activities (including the proper installation and maintenance of approved BMPs), policies, and procedures.
- (6) *Initial Construction Inspections* - Prior to the initiation of ground-disturbing activities at any site, except for activities associated with the installation of BMPs at a site, an engineer or qualified inspector employed or retained by the Permittee who reviews and becomes familiar with the BMPs Plan, shall inspect the site to document whether the BMPs required by the BMPs Plan have been installed correctly and in the correct locations prior to the commencement of ground-disturbing activity.
- (7) *Inspections and Enforcement* - The Permittee shall revise its SWMPP to specify mandatory minimum project inspection and enforcement requirements for DOT-HWYS inspectors at all construction sites as follows:

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- (a) In addition to inspections required by the General Construction Activity Storm Water permit, and as otherwise required under the NPDES permit program, all in-house and contract construction projects shall be inspected at least monthly by a qualified construction inspector who is independent (i.e., not involved in the day-to-day planning, design, or implementation) of the construction projects to be inspected. The Permittee may use more than one (1) qualified construction inspector for these inspections. The Permittee shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP plan. The reporting procedures shall include, at a minimum, notification of any deficiencies to the DOH. The Permittee shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with the NPDES permit, the General Construction Activity Storm Water permit, or any other applicable requirements under the NPDES permit program. These enforcement procedures shall be submitted to DOH for review and acceptance within one (1) year of the effective date of this permit.
- (b) All encroachment permit construction projects shall be inspected at least once annually or once during the life of the project, whichever comes first, by a qualified construction inspector who is independent (i.e., not involved in the day-to-day planning, design, or implementation) of the construction projects to be inspected. The Permittee may use more than one (1) qualified construction inspector for these inspections. The Permittee shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMPs Plan. The reporting procedures shall include, at a minimum, notification of any deficiencies to the DOH. The Permittee shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with the NPDES permit or the General Construction Activity Storm Water permit. These enforcement procedures shall be submitted to DOH for review and acceptance within one (1) year of the effective date of this permit.

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- e. Post-Construction Storm Water Management in New Development and Redevelopment
- (1) *Develop design criteria* - Within one (1) year of the effective date of this permit, the Permittee shall develop, submit, and implement a Post Construction BMP Manual with specific criteria establishing when permanent post-construction BMPs must be included in project design to address storm water impacts and pollutants of concern. These criteria shall take into consideration, among other things, potential water quality impacts anticipated from the permanent post-construction conditions. Permanent post-construction BMPs to be considered shall include those designed to treat storm water runoff and other structural type devices.
  - (2) *Project Design Review* - The Permittee shall not advertise any construction project nor award any construction contract unless and until the project design has been reviewed to ensure that appropriate permanent post-construction BMPs have been included in the project design and are included in the bid package. No project shall proceed without the inclusion of appropriate permanent post-construction BMPs unless there is specific documentation demonstrating that such post-construction BMPs are not practicable. Project documents for projects that will include installation of permanent post-construction BMPs shall also include appropriate requirements for their future continued maintenance.
  - (3) *SWMPP Revisions* -The Permittee shall revise its SWMPP as applicable to:
    - (a) Require installation and appropriate maintenance of permanent post-construction BMPs, where applicable, on all New Development and Significant Redevelopment projects that the Permittee undertakes as well as for similar encroachment permit projects located within the Permittee's rights-of-way.
    - (b) Add the following additional permanent post-construction BMPs to the current list in Section 3 of the New Development and Significant Redevelopment BMP Program Plan, Section VIII.M. of the SWMPP, dated December 2003: infiltration basins, infiltration trenches, media filters, Continuous Deflective Separation (CDS) units, and other similar technologies.
  - (4) *BMP, Operation and Maintenance, and Inspection Database* - Within two (2) years of the effective date of this permit, the Permittee shall

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develop and implement a system to compile a database of post-construction BMPs and the frequency of maintenance and inspection of the BMPs. The database shall include both public and private activities or projects which initially discharge into the Permittee's MS4 and shall begin in the plan review stage with a database or geographic information system (GIS). Within the permit renewal application, the Permittee shall provide the plan to map the post-construction BMPs on the GIS. In addition to the standard information collected for all projects (e.g., project name, owner, location, start/end date, etc.), the database shall also include, at a minimum:

- Type and number of Source Control BMPs
- Type and number of Treatment Control BMPs
- Latitude/Longitude coordinates of controls using Global Positioning Systems (GPS) and NAD83 Datum
- Photographs of controls
- Operation and maintenance requirements, including frequency
- Frequency of inspections

(5) *Retrofit Feasibility Study* - The Permittee shall complete a feasibility study to retrofit the existing MS4 discharging to receiving waters listed pursuant to Section 303(d) of the Act for either sediment, siltation, turbidity, and/or trash. The retrofits may include water quality BMPs to meet State Water Quality Standards. A detailed scope of the feasibility study shall be submitted to DOH within one (1) year of the effective date of this permit. A final feasibility study shall be submitted to DOH within three (3) years of the effective date of this permit.

(6) *Education and Training*

(a) *Project Proponents*. Within one (1) year of the effective date of this permit, the Permittee shall provide education and outreach material for those parties who apply for DOT permit (i.e., developers, engineers, architects, consultants, construction contractors, excavators, and property owners) on the selection, design, installation, operation and maintenance of storm water treatment controls. The outreach material may include a simplified flowchart for thresholds triggering permits and requirements, a list of required permits, implementing agencies, fees, overviews, timelines and a brief discussion of potential environmental impacts associated with storm water runoff.

- (b) The Permittee shall provide annual training to all DOT-HWYS staff with project design and construction storm water responsibilities, including design engineers, construction engineers, and plan review staff, specific to DOT-HWYS activities, policies, and procedures and shall include training on the DOT-HWYS Post Construction BMP Manual.
- f. Pollution Prevention/Good Housekeeping
- (1) Debris Control BMPs Program Plan
    - (a) *Inspection/Maintenance Schedule* - The Permittee shall revise its SWMPP to include procedures and a schedule for inspections of:
      - (i) All state highways on Oahu for the purpose of identifying if sweeping of roadways, shoulders, and/or medians is needed, and
      - (ii) All state highway storm drainage system catch basins, gutters and open ditches, trenches, and storm drains on Oahu for the purpose of identifying if cleaning of such structures is needed.

In both cases, the need for sweeping and/or structure cleaning shall be determined based upon material accumulation rates and potential threat of discharge to State waters that may have an effect on water quality in addition to other criteria. The schedule shall provide that each highway mile and storm drainage feature is inspected at least once annually. The adopted procedures shall provide for the identification of highway segments and their associated storm drainage features that may require more frequent sweeping and/or structure cleaning based upon material accumulation rates and potential threat of discharge to State waters that may have an effect on water quality. The procedures shall establish debris accumulation thresholds above which sweeping and/or structure cleaning must occur. The priority-based schedule shall be submitted within one (1) year of the effective date of this permit.

- (b) *Storm Drain Mapping* - Within 180 days of the effective date of the permit, the Permittee shall submit to DOH a schedule for completing the mapping by the end of the permit term. The Permittee shall complete mapping of its MS4 including outfalls, storm drain pipes, open channels, storm drainage features, and facilities.

- (c) *Asset Management System* - The Permittee shall develop and implement a comprehensive asset management system of the Oahu District's storm drain system and related appurtenances including maintenance equipment, to ensure appropriate debris removal and system maintenance. The asset management system shall, at a minimum, include identification of the number and location of all drain inlets and outfalls. The Permittee shall use this asset management system to establish priorities and to schedule and track efforts of appropriate system maintenance and debris removal program activities such as street sweeping, catch basin cleaning, and green waste and accumulated soil removal. The asset management system shall include justification of its priorities on the basis of potential impacts to water quality. The asset management system shall be completed within two (2) years of the effective date of this permit, included in the SWMPP, and implemented upon submittal.
  - (d) *Storm Drain Placards* - The Permittee shall revise its SWMPP to develop procedures and a schedule to install and maintain storm drain placards. Priority shall be given to the Permittee's highways in industrial and commercial areas and areas with pedestrian traffic. The Permittee shall develop a system to track placement of placards and procedures for maintenance staff to inspect placards during routine maintenance activities.
- (2) Chemical Applications BMPs Program Plan
- (a) *Training* - The Permittee shall develop and implement a specific training program for all potential appliers (bulk and hand-held) of fertilizers, pesticides, and herbicides in the proper application of these substances. The Permittee shall not permit the application of fertilizers, pesticides, or herbicides unless the applier has first received this training.
  - (b) *Implement appropriate requirements for pesticide, herbicide, and fertilizer applications.* The Permittee shall revise its SWMPP and implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides, and fertilizers from municipal areas and activities to its MS4 within one (1) year of the effective date of this permit. Municipal areas and activities include, at a minimum, municipal facilities, public right-of-ways, and landscaped areas.



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Such BMPs shall include, at a minimum: (1) educational activities, permits, certifications and other measures for municipal applicators; (2) integrated pest management measures that rely on non-chemical solutions; (3) the use of native vegetation; (4) chemical application, as needed; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

The Permittee shall ensure that their employees or contractors or employees of contractors applying registered pesticides, herbicides, and fertilizers shall work under the direction of a certified applicator, follow the pesticide label, and comply with the State requirements. All Permittee employees or contractors applying pesticides, herbicides or fertilizers shall receive training on the BMPs annually.

(3) Erosion Control BMPs Program Plan

(a) The Permittee shall revise its SWMPP to:

- (i) Include water quality impacts as a priority in selecting projects for permanent erosion control improvements, ensuring that erosional areas with the potential for significant water quality impact, but with limited public safety concerns, are also considered a high priority for remediation. Identification of erosional areas with the potential for significant water quality impact shall include areas where there is evidence of rilling, gullyng, and/or other evidence of significant sediment transport, and areas in close proximity to receiving waters listed pursuant to Section 303(d) of the Act as impaired for either sediment, siltation and/or turbidity. The Permittee shall include procedures to identify and implement erosion control projects based on water quality concerns.
- (ii) Require the implementation of temporary erosion control measures (e.g., erosion control blankets and/or fabrics, gravel bag placement and silt fencing/fiber rolls) on erosional areas with the potential for significant water quality impact if a permanent solution is not immediately possible. Notwithstanding any other implementation provisions, the revised SWMPP shall require the implementation of such erosion control measures on the 10 highest priority sites or a maximum of \$1.5 million spent on the highest priority sites within two (2) years of submittal of the revised SWMPP.

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- (iii) Modify the list of approved Erosion and Sediment Control BMPs to include, at a minimum, at least all of those contained in the City BMP Manual. The revised SWMPP shall also provide for the implementation of alternative Erosion and Sediment Control BMPs, where appropriate.
    - (iv) The Permittee shall develop and implement a program to prevent erosion at its storm drain system outlets. The Permittee shall install velocity dissipators or other BMPs to reduce erosion at these locations.
  - (b) Within one (1) year of the effective date of the permit, the Permittee shall submit a list of projects and implementation schedule for permanent erosion control improvements as described in D.1.f.(3)(a)(i) to DOH.
- (4) Maintenance Facilities BMPs Program Plan
- (a) *Baseyard Plans* - For each maintenance baseyard located on Oahu, the Permittee shall develop and implement a site-specific Storm Water Pollution Control Plan (SWPCP) that includes, among other things, a detailed site plan, site description, facility layout, description of potential pollutant sources, site-specific BMPs, inspection procedures, and spill cleanup procedures. An individual at each facility (e.g., yard foreman) shall be charged with ensuring implementation of the SWPCP. This individual shall be trained to conduct inspections and identify areas for BMPs improvement. To ensure consistency and provide assistance and oversight, the Permittee shall identify an individual, also trained to conduct inspections and identify areas for BMPs improvement and independent of any specific baseyard, who shall conduct inspections of all six (6) baseyards at least quarterly. The Permittee shall submit the site-specific SWPCP for each maintenance baseyard within 180 days of the effective date of this permit.
  - (b) *Dewatering Facility* - The Permittee shall identify and construct, if necessary, a dewatering facility for dewatering and disposal of debris removed from its MS4. DOT-HWYS shall submit a plan for how it will address dewatering wastes to DOH within one (1) year of the effective date of the permit.

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- (c) *Maintenance BMPs* - The Permittee shall develop and implement a written set of maintenance BMPs for routine and emergency in-house activities within 90 days of the effective date of this permit. Activity specific BMPs shall be organized as a manual and be created in a format that facilitates its use by field staff (i.e., field friendly). It shall be distributed to all field staff and shall complement the overall goals of the SWMPP.
- (d) *Training* - The Permittee shall develop and implement a formal storm water awareness training program for Oahu District Maintenance supervisors and staff that identifies potential sources of pollution, general BMPs that can be used to reduce and/or eliminate such sources, and specific BMPs for their facilities and activities. The training shall incorporate components of the public education campaign being implemented by the City and educate staff that they serve a role in protecting water quality. Maintenance supervisors and staff shall be made aware of the NPDES permit, the overall SWMPP, the SWPCP for their baseyard, and the applicable BMPs Program(s). The training shall be developed and submitted to DOH for review and acceptance within two (2) years of the effective date of this permit. Permittee maintenance staff shall receive training within three (3) years of the effective date of this permit, and annually thereafter.

(5) Storm Water Pollution Control for Flood Control Projects

- (a) *Pump Station* - The Permittee shall implement the flood control project activities described in the SWMPP, including monthly inspection and maintenance of the Interstate H-1 Punahou Pump Station.

g. Industrial and Commercial Activities Discharge Management Program

The Permittee shall develop and implement an industrial and commercial discharge management program to reduce to the MEP the discharge of pollutants from all industrial and commercial facilities and activities which initially discharge into the Permittee's MS4. At a minimum, the program shall include:

- (1) *Inventory and Map of Industrial Facilities and Activities*. The Permittee shall update and submit, in electronic and paper format, the industrial facilities and activities inventory (industrial inventory), sorted by TMK,

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and map of such facilities and activities discharging, directly or indirectly, to its MS4 within the 4<sup>th</sup> End-of-Year Report (also known as the permit renewal application). The industrial inventory update may be based on the following:

- ◆ Findings from follow-up investigations of the December 2000 Storm Water Questionnaire Survey of Parcels Adjacent to Highway Rights-of-Way (Questionnaire Survey);
- ◆ Available information about parcel owners from the City and the State; and/or
- ◆ Collection of new information obtained during field activities or through other readily available intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer hook-up permits).

The industrial inventory shall include the facility name, street address, TMK, nature of business or activity, Standard Industrial Classification (SIC) code(s) that best reflect the facility product or service, principal storm water contact, receiving State water, and whether a Notice of General Permit Coverage (NGPC) under HAR, Chapter 11-55, Appendix B, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Industrial Activities (General Industrial Storm Water permit) or any other applicable NPDES permit has been obtained, including a permit or file number and issuance date.

At a minimum, the industrial inventory shall include facilities and activities such as:

- ◆ Municipal Landfills (open and closed)
- ◆ Hazardous waste recovery, treatment, storage and disposal facilities
- ◆ Facilities subject to Section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11023
- ◆ Findings from follow-up investigations of the industrial facilities identified in the Questionnaire Survey
- ◆ Facilities subject to General Industrial Storm Water permit coverage or any other applicable NPDES permit coverage which are adjacent to the DOT-HWYS right-of-way or discharge to the MS4
- ◆ And any other industrial facility that either the Permittee or DOH determines is contributing a substantial pollutant loading to the DOT-HWYS MS4.

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- (2) *Inventory and Map of Commercial Facilities and Activities.* The Permittee shall update and submit, in electronic and paper format, the commercial facilities and activities inventory (commercial inventory), sorted by priority areas, and map of such facilities and activities discharging, directly or indirectly, to its MS4 within the permit renewal application. The commercial inventory update may be based on the following:
- ◆ Findings from follow-up investigations of the Questionnaire Survey;
  - ◆ Available information about parcel owners from the City and the State; and/or
  - ◆ Collection of new information obtained during field activities or through other readily available intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer hook-up permits).

The commercial inventory shall include, by priority area, the facility name, street address, TMK, nature of business or activity, SIC code(s) that best reflect the facility product(s) or service(s), principal storm water contact, and receiving State water.

At a minimum, the commercial inventory shall include facilities and activities such as:

- ◆ Findings from follow-up investigations of the commercial facilities identified in the Questionnaire Survey
  - ◆ Retail Gasoline Outlets
  - ◆ Retail Automotive Services, including Repair Facilities
  - ◆ Restaurants
  - ◆ Any other commercial facility that either the Permittee or DOH determines is contributing pollutants to the DOT-HWYS MS4 that may cause or contribute to an exceedance of State water quality standards.
- (3) *Prioritized Areas for Industrial and Commercial Facility and Activity Inspections.* The Permittee shall continue to update the plan to designate priority areas for industrial and commercial facility and activity inspections. The prioritized area plan should take into account the number of industrial and commercial facilities in the area, the density of these facilities, previous storm water violations in the area, and water quality impairments in the area. The plan shall identify priority areas and set a schedule for inspections within each area over the duration of this permit.

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The prioritized area plan shall be submitted to DOH within one (1) year of the effective date of this permit.

(4) *Inspection of Industrial and Commercial Facilities and Activities*

The industrial/commercial inspection program shall be submitted within one (1) year of the effective date of this permit and updated as appropriate to reflect the outcomes of the investigations discussed in the following paragraphs.

- (a) The Permittee shall complete follow-up investigations on all industrial, commercial, and high-density residential parcels discharging to its MS4 that are identified in the Questionnaire Survey.
- (b) The Permittee shall ensure that all industrial and commercial facilities and activities identified in the industrial and commercial inventories required under Parts D.1.g.(1) and D.1.g.(2) are inspected according to the schedule below. Inspectors shall determine compliance with local ordinances and the terms of this permit. If DOH inspects a facility for compliance with the General Industrial Storm Water permit coverage or any other applicable NPDES permit, then the Permittee does not need to inspect the facility that year.

All industrial facilities within a priority area shall be inspected in accordance with the applicable portions of the "NPDES Compliance Inspection Manual" (EPA 300-B-94-014), dated September 1994. The Permittee shall send the inspection report(s) to the DOH within two (2) months of the inspection date. The Permittee shall also inspect commercial facilities in the priority area to ensure compliance with local ordinances and the terms of this permit. The Permittee shall conduct, at a minimum, the following number of industrial and commercial inspections each year in the priority areas scheduled for inspection:

Permit Year	Number of Inspections
1	20
2	30
3	40
4	60

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Permit Year	Number of Inspections
5	80

If the Permittee inspects all industrial and/or commercial facilities in a priority area before completing the minimum number of inspections that year, the Permittee shall begin inspections in the next priority area scheduled for inspections. Each industrial facility that does not have NPDES permit coverage under the NPDES permit program shall be inspected at least twice every five (5) years, and each industrial facility that does have such NPDES permit coverage is inspected at least once every five (5) years. Commercial dischargers are to be ranked according to relative risk of discharge of contaminated runoff to the DOT-HWYS MS4. The highly ranked commercial facilities shall be inspected at least once every five (5) years.

Inspections must consist of a review of implementation of BMPs for compliance with local ordinances and this permit to assess potential impacts to receiving waters. Inspections shall also assess potential sources of pollutants to the DOT-HWYS MS4 and require controls to prevent discharge of pollutants to the DOT-HWYS MS4.

Inspectors shall be trained to identify deficiencies, assess potential impacts to receiving waters, and evaluate the appropriateness and effectiveness of deployed BMPs and SWPCPs, if applicable.

The inspectors shall use an inspection checklist, or equivalent, and photographs to document site conditions and BMP conditions.

Records of all inspections shall be maintained for a minimum of five (5) years, or as otherwise indicated.

- (5) *Enforcement Policy for Industrial Facilities and Activities.* The Permittee shall develop and submit an enforcement policy that shall go into effect when it has been documented that an industrial or commercial facility has failed to comply with local ordinances and/or terms of this permit. This policy shall be submitted to DOH for review and acceptance within 180 days of the effective date of this permit. The policy shall be part of the overall escalating enforcement policy and must consist of the following:
- ◆ Issuance of written documentation to a facility representative within two (2) weeks of storm water deficiencies identified during

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inspection. Documentation must include copies of all field notes, correspondence, photographs, and sampling results if applicable.

- ◆ A timeline for correction of the deficiencies.
- ◆ Provisions for re-inspection and potential enforcement actions, if necessary.

In the event the Permittee has exhausted all available sanctions and cannot bring a facility or activity into compliance with local ordinances and this permit, or otherwise deems the facility or activity an immediate and significant threat to water quality, the Permittee shall provide oral notification to DOH within one (1) week of such determination. Oral notification shall be followed by a copy of all inspection checklists, notes, photographs, and related correspondence within two (2) weeks of the determination. In instances where an inspector identifies a facility that has not applied for the General Industrial Storm Water permit coverage or any other applicable NPDES permit, the Permittee shall provide oral notification to DOH within one (1) week of such determination. Such oral notification shall be followed by written notification within two (2) weeks of the determination.

- (6) *Training.* The Permittee shall develop and provide training to staff on how to conduct industrial and commercial inspections, the types of facilities covered by the General Industrial Storm Water permit coverage or any other applicable NPDES permit, components in a SWPCP for industrial facilities, BMPs and source control measures for industrial and commercial facilities, and inspection and enforcement techniques. This training shall be specific to DOT-HWYS activities, policies, and procedures. The training shall be developed and submitted to DOH for review and acceptance within 90 days of the effective date of this permit. Permittee inspectors shall receive training within 180 days of the effective date of this permit, and annually thereafter.
2. Revise the SWMPP, as necessary, if any discharge limitation or water quality standard established in HAR, Section 11-54-4 is exceeded. The revisions shall include BMPs and/or other measures to reduce the amount of pollutants found to be in exceedance from entering State Waters.
3. Properly address all modifications, concerns, requests, and/or comments to the satisfaction of the DOH and/or EPA.
  - a. SWMPP Modifications. The storm water pollution control activities described in the SWMPP may need to be modified, revised, or amended from time to time



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over the life of the permit to respond to changed conditions and to incorporate more effective approaches to pollutant control. Minor changes may be proposed by the Permittee or requested by the the Director of Health (Director) or the Regional Administrator of the EPA. Proposed changes that imply a major reduction in the overall scope and/or level of effort of the SWMPP must be made for cause and in compliance with 40 CFR §122.62 and Part 124. A written report shall be submitted to the Director for approval at least 30 days prior to the initiation date of the major modification. The Permittee shall report and justify all other modifications made to the SWMPP in the End-of-Year Report for the year in which the modification was made.

- b. System Modifications include any planned physical alterations or additions to the permitted MS4 and any existing outfalls newly identified over the term of the permit. All alterations and/or additions to the DOT-HWYS MS4 shall be indicated in the End-of-Year Report. Major alterations and/or additions shall be identified by letter within 30 days of the completion of the alteration and/or addition.

**E. MONITORING REQUIREMENTS**

**1. Annual Monitoring Plan**

- a. The Permittee shall submit the Annual Monitoring Plan to the Director by June 1st of each year for review and approval. The Annual Monitoring Plan shall be implemented over the coming fiscal year.
- b. The plan shall, at a minimum, include the following items:
  - (1) Written narrative of the proposed monitoring plan's objectives and description of activities;
  - (2) Written documentation of the following:
    - (a) Type, frequency, and location of data gathered on levels of pollutants in non-stormwater discharges to the MS4;
    - (b) Characteristics (timing, duration, intensity, total rainfall) of the storm event(s);
    - (c) Parameters for measured pollutant loads; and
    - (d) Range of discharge volumes to be monitored, as well as the timing, frequency, and duration at which they are identified;
  - (3) Written documentation of the analytical methods to be used;
  - (4) Written documentation of the Quality Assurance/Quality Control procedures to be used; and
  - (5) Estimated budget to be implemented over the coming fiscal year.

**2. Ala Wai Canal, Kawa Stream, and Waimanalo Stream WLA**

Working jointly with the City, the Permittee shall propose an implementation and monitoring plan for the existing Ala Wai Canal, Kawa Stream, and Waimanalo Stream WLA. The implementation plan shall identify specific DOT-HWYS activities targeted to reducing total nitrogen and total phosphorus discharges in each watershed as necessary to comply with the WLAs. The monitoring plan shall specify the water quality monitoring and activity tracking necessary to demonstrate efforts to comply with the urban source WLAs assigned to both the Permittee and City. The Permittee shall submit these plans to DOH within one (1) year of the effective date of this permit.

**3. Other WLAs**

As additional WLAs are adopted by DOH that identify the Permittee as a source, the Permittee shall develop implementation and monitoring plans for a minimum of one (1) additional WLA per year within one (1) year of the adoption date.

**F. REPORTING REQUIREMENTS**

**1. Mid-Year and End-of-Year Reports**

- a. The Permittee shall submit the Mid-Year Report by March 31st of each year, which shall cover the six (6) month period beginning on July 1st and ending on December 31st. The Permittee shall submit the End-of-Year Report by October 31st of each year, which shall cover the past fiscal year.
- b. The Permittee shall revise its SWMPP to include a description of reporting procedures and activities, including schedules and proposed content of reports such that, at a minimum, the following is reported for each storm water program component in each report:
  - (1) *Requirements* - Describe what the Permittee was required to do (describe status of compliance with conditions of this permit and other commitments set forth in the SWMPP).
  - (2) *Past Activities* - Describe activities over the reporting period in comparison to the requirements, including, where applicable, progress accomplished toward meeting specific measurable goals, standards and milestones or other specific performance requirements. When requirements were not fully met, include a detailed explanation as to why the Permittee did not meet its commitments for the reporting period. Also describe an assessment of the SWMPP, including progress towards implementing each of the SWMPP program components.
  - (3) *Future Activities* - Describe planned activities, including, where applicable, specific activities to be undertaken during the next reporting period toward accomplishing specific measurable goals, standards and milestones or other specific performance requirements.
  - (4) *Resources* - Report on the status of the Permittee's resource base for implementing this NPDES permit during the applicable reporting period and an estimate of the resources over and above those required in the current reporting period that will be required in the next reporting period.
- c. *Modifications*. In each report, the Permittee shall describe any modifications made to the SWMPP and implementation schedule during the past year, including justifications. The Permittee shall also describe major modifications made to the Permittee's MS4, including, but not limited to, addition and removal of outfalls, drainage lines, and treatment facilities.

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- d. *Program Effectiveness Reporting.* Within one (1) year of the effective date of the permit, the Permittee shall submit to DOH a written strategy for determining effectiveness of its SWMPP. The strategy shall include water quality monitoring efforts as well as program implementation information and other indicators. The Permittee shall include an assessment of program effectiveness and identification of water quality improvements or degradation beginning with the second End-of-Year Report.

2. Annual Monitoring Report

- a. The Permittee shall submit the Annual Monitoring Report by October 31st of each year. The Annual Monitoring Report shall cover the past fiscal year.
- b. The monitoring report shall at a minimum, include the following items:
  - (1) Written narrative of the past fiscal year's activities, including a description of objectives, activities, and coordination with other agencies.
  - (2) Data gathered on levels of pollutants in non-storm water discharges to the DOT-HWYS MS4; and
  - (3) Using rainfall data collected by the Permittee and other agencies, the Permittee shall relate rainfall events, measured pollutant loads, and discharge volumes from the watershed and other watersheds that may be identified from time to time by the Director or Permittee.

3. Memorandum of Understanding (MOU)

- a. Roles and Responsibilities of DOT-HWYS

DOT-HWYS shall continue to maintain and comply with the "Memorandum of Understanding Between the Department of Transportation Highways Division, State of Hawaii, and the Department of Environmental Services and the Department of Facility Maintenance, City and County of Honolulu," signed by the Department of Environmental Services on December 19, 2001; by the Department of Facility Maintenance on December 27, 2001; and the State Department of Transportation, Highways Division on February 1, 2002. Amendments to the MOU, if any, shall be summarized in the End-of-Year Report.

- b. Legal Authority of DOT-HWYS

DOT-HWYS shall continue to maintain and comply with the "Memorandum of Understanding (MOU) Between Department of Transportation, State of Hawaii,

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and Department of Health, State of Hawaii” which was executed on July 8, 1999, because 40 CFR 122.26(d)(2)(i) requires that DOT-HWYS obtain the legal authority to control the discharge of pollutants to its storm sewer system. Amendments to the MOU, if any, shall be summarized in the End-of-Year Report.

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

**RESOLUTION 10-296**

Introduced: 10/07/10 By: TODD APO (BR)

Committee: COUNCIL

Title: RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, RELATING TO A MASTER AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE STATE OF HAWAII FOR THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT SECTION FROM WEST OAHU TO FARRINGTON HIGHWAY.


Links: [RES10-296](#)

CC-182 OKINO – REQUESTING RESOLUTION 10-196 BE PLACED ON THE OCTOBER 13, 2010 COUNCIL AGENDA.

COUNCIL	10/13/10	RESOLUTION 10-296 WAS ADOPTED.							
ANDERSON	Y	APO	Y	CACHOLA	N	DELA CRUZ	Y	DONOHUE	Y
GARCIA	Y	KOBAYASHI	N	OKINO	Y	TAM	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
TODD K. APO, CHAIR AND PRESIDING OFFICER